

Standard Conditions of Sale of Goods SmartLab

1 Definitions

In this document:

- (a) **Agreement** means this agreement between the Seller and the Buyer for the sale and purchase of the Goods on the terms specified in these Standard Conditions of Sale of Goods, the Invoice and any written variation to them.
- (b) **Buyer** means the person or persons (being a company or individual) specified in the Invoice as the buyer of the Goods.
- (c) **Completion** means the time when the Buyer pays the Seller the full Price for the Goods.
- (d) **Destination** means the proposed location of delivery of the Goods specified in the Invoice or as otherwise agreed.
- (e) **Goods** means the goods to be provided by the Seller to the Buyer as set out in the Invoice.
- (f) **GST** means goods and services tax within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.
- (g) **Invoice** means any order (whether electronic, written or via the Seller's website) submitted to the Seller or submitted to the Buyer which details the make, model and IMEI number of the Goods (and accessories, if any).
- (h) **Payment Due Date** means, the date when the Buyer purchases the Goods.
- (i) **Price** means the price payable by the Buyer for the Goods which shall be as specified by the Seller (and which shall be in Australian currency unless otherwise specified by the Seller).

- (j) **Seller** means SmartLab Pty Ltd (ACN 638 884 983) as trustee for The NT Phone Repairs Unit Trust (ABN 55 980 513 432) trading as **SmartLab**.

2 Application

These Standard Conditions of Sale of Goods apply to the sale of Goods by the Seller to the Buyer and form part of a Invoice issued by or on behalf of the Buyer to the Seller unless specifically excluded or varied by the Seller in writing.

3 Agreement to buy and sell

In return for payment of the Price for the Goods, the Seller sells and the Buyer buys the Goods on the terms of this Agreement.

4 Inclusions

The Seller agrees to deliver to the Buyer the accessories as specified in the Work Order (if any) upon completion.

5 Placement of orders

- (a) The Agreement becomes binding on the parties at the time this Agreement is signed by the Seller and Buyer.
- (b) Each Invoice must specify:
 - (i) the name of the Buyer;
 - (ii) the Price;
 - (iii) the quantity and description of the Goods ordered; and
 - (iv) the proposed Destination for delivery of the Goods (if any);
 - (v) the date on which the Goods were Purchased; or
 - (vi) a preferred delivery date for the Goods (if any).

6 Collection of Order

The Seller will use its best endeavours to prepare the Goods for collection in accordance with the Invoice before Completion.

7 Delivery of orders

- (a) The Seller will use its best endeavours to pack and ship the Goods for delivery to the

- Destination in accordance with the Invoice.
- (b) As soon as the Goods are ready for delivery, the Seller will notify the Buyer in writing.
- (c) The Seller will send the Goods through the Buyers nominated courier, or if no preference, the Seller's preferred courier and provide a tracking number to the Buyer as soon as practicable after lodgement.

8 Invoices and Payment

- (a) The Buyer must pay the Price applicable to the Goods on the Payment Due Date, except to the extent otherwise agreed in writing.
- (b) Unless stated otherwise, all invoices are exclusive of GST. The Buyer must pay the Price, plus the requisite GST, in relation to each order by the Payment Due Date.
- (c) The Seller is not obliged to deliver the Goods prior to payment of its invoice unless otherwise agreed.

9 Packing and Delivery

- (a) The Buyer will be liable for all costs associated with packing, preparing, shipping of the Goods; and
- (b) The Buyer will be liable for any taxes, duties, or government charges imposed or levied in Australia or overseas in connection with this Agreement or the sale or delivery of the Goods.
- (c) The Buyer shall be responsible for any customs clearances that are required for the delivery of the Goods to the Destination.
- (d) The Seller may add the costs mentioned in this clause to any invoice to the Buyer.

10 Passing of title and Risk

- (a) Where the Buyer has paid the Price and collected the Goods, the title to the Goods free of encumbrances will pass to the Buyer upon collection.
- (b) Where the Buyer has paid for the Goods before delivery of Goods

- to the Destination, the title to Goods free of encumbrances will pass to the Buyer upon delivery of the Goods to the Destination, the Buyer's nominated agent or courier, as the case may be.
- (c) The Goods are at the risk of the Buyer only on and from Completion and remain at the risk of the Seller until Completion.

11 Rights in relation to Goods

- (a) The Seller reserves its rights in relation to the Goods until all accounts owed by the Buyer to the Seller are fully paid. These are rights to ownership of the Goods;
- (b) In connection with the Goods, the Seller states to the Buyer that:
 - (i) the Seller has the right to supply the Goods to the Buyer;
 - (ii) the activities of the Buyer in supplying the Goods do not infringe the rights of the owner of the Goods (where the Seller is not the owner of the Goods); and
 - (iii) if the Goods are not owned by the Seller, that the Seller is authorised to supply the goods to the Buyer.

12 Sellers Warranties

The Seller makes no warranties as to:

- (a) the condition of the Goods;
- (b) whether they are fit for their intended purpose nor the Buyer's intended purpose;
- (c) whether the Goods can be operated or are otherwise fit for use;
- (d) whether the Goods comply with any relevant laws or specifications;
- (e) whether the Goods operate in accordance with any relevant laws or technical specifications.

Not including the above (a) to (e) the Seller will provide a twelve (12) month warranty on the Goods (specifically subject to clauses 12 (f) to (i)) if the fault is due to a part replaced by SmartLab

and the fault from the said part is deemed a manufacturing fault,

provided that, upon return of the Goods for a warranty claim, if the Seller finds evidence that:

- (f) the Goods have been tampered with in any way;
- (g) that another entity has attempted repairs on the Goods;
- (h) if the Goods have been physically damaged or liquid damaged; or
- (i) that the Buyer has induced damage of any part or area of the Goods,

the warranty is void.

13 Buyers Acknowledgments

The Buyer expressly acknowledges and agrees that:

- (a) the Seller is selling and the Buyer is purchasing the Goods on an "as is where is" basis;
- (b) the Goods shall be sold in their present state and condition with all defects latent and patent;
- (c) it accepts that the handling, use and removal of the Goods are entirely at its own risk.

14 Buyers Warranties

The Buyer warrants and represents that by entering into this Agreement it:

- (a) has relied on its own enquiries;
- (b) it has not relied on any statement, representation, warranty or condition of the Seller, or any of its agents as to the correct use, profitability, viability or suitability of the Goods or the use to which the Buyer intends to put the Goods;
- (c) has not relied on any statement, representation, warranty or condition of the Seller or any of its agents.

15 Indemnity

- (a) The Buyer indemnifies and must keep indemnified the Seller from and against all costs, losses, damages, expenses (including legal expenses) or other liabilities suffered or incurred by the Seller

or its employees arising out of or in respect of this Agreement including as a consequence of:

- (i) any negligence, wrongful act or omission or breach of duty of or by the Buyer;
 - (ii) any breach by the Buyer of any of the provisions of this Agreement; or
 - (iii) any claim that the provision of the Goods by the Buyer infringes the intellectual property rights of any person.
- (b) This clause will survive the termination of this Agreement.

16 Liability

- (a) The Seller shall not be liable to the Buyer for any loss or damage (of any kind whatsoever) suffered or incurred by the Buyer as a result of any delay in delivery of the Goods or damage to the Goods due to circumstances outside of the Seller's reasonable control.
- (b) The Seller's maximum liability to the Buyer in any circumstances will not exceed the replacement or repair of the Goods ordered by the Buyer.
- (c) On and from the collection of the Goods, the Goods are the responsibility of the Buyer and the Buyer indemnifies the Seller from and against those liabilities.
- (d) This clause will survive the termination of this Agreement

17 Term

This Agreement commences on the date it is made and ends when terminated in accordance with any express right of termination set out in this agreement.

18 Proper law

This Agreement is subject to the law of the Northern Territory of Australia and Australia (as applicable to the Northern Territory).

19 Counterparts

This Agreement may be executed on one or more counterparts, and each signed copy will be considered as the same Agreement.

Executed as an agreement

20 **Waiver**

A party's:

- (a) failure to exercise, or delay in exercising, a power or right does not operate as a waiver of that power or right;
- (b) waiver or exercise of a power or right does not preclude its future exercise or the exercise of any other power or right; and
- (c) waiver of any power or right will not be effective unless it is in writing and signed by the Representative of the party waiving its rights.

Signed by the Seller
SmartLab Pty Ltd (ACN 638
884 983) as trustee for The
NT Phone Repairs Unit
Trust (ABN 55 980 513
432)

[Signature of Seller]

Signed by the Buyer in
the presence of

21 **Severance**

- (a) Each word, phrase, sentence, paragraph and clause of this Agreement is severable.
- (b) If a court determines that a part of this Agreement is unenforceable, invalid, illegal or void that court may sever that part.
- (c) Severance of any part of this Agreement will not affect any other part of this Agreement.

22 **Reading down**

Where a word, phrase, sentence, paragraph or other clause or provision of this Agreement would otherwise be unenforceable, illegal or void the effect of that provision shall so far as possible, be limited and read down so that it is not unenforceable, illegal or void.

23 **Electronic Signing this Agreement**

Each party agrees that this Agreement and any other documents to be delivered in connection herewith may be electronically signed (including inserting any electronic symbol or process attached to, or associated with signing this document), and that any electronic signatures (or symbol) appearing on this Agreement or such other documents are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.