

1. Definitions: in these Terms and Conditions:
 - a. "ACL" (the Australian Consumer Law) means Schedule 2 of the Competition and Consumer Act 2010 (Cth) including any regulations made under that Act.
 - b. "Company" means Xacom Pty Ltd ACN 008 053 110.
 - c. "Consumer" means:
 - i. A natural person ("individual" acquiring Goods or Services at a price not exceeding \$40,000 (including GST) (or such other amount as specified in the ACL);
 - ii. An individual or corporation ("Person") acquiring Goods or Services at a price not exceeding \$40,000 (inclusive of GST) (or such other amount as specified in the ACL);
 - iii. A Person acquiring Goods or Services of a kind ordinarily acquired for personal, domestic or household use or consumptions, but excludes a Person acquiring the Goods or Services holding himself out as acquiring the Goods or Services for the purpose of:
 1. Resupply or
 2. Using them up or transforming them, in trade or commerce in the course of production or manufacture, or in the course of repairing or treating other goods or fixtures on land.
 - d. "Customer" means the natural person or corporation named in a Quote or Invoice (and if more than one Customer, jointly and severally).
 - e. "Goods" means the goods that are the materials and / or equipment to be supplied by the Company as set out in a Quote and includes any software.
 - f. "GST Law" has the meaning defined in A New Tax System (Goods and Services Tax Transition) Act 1999.
 - g. GST has the meaning defined in GST Law.
 - h. "Intellectual Property" or "IP" means the Company's proprietary interests in and relating to Goods and other work specified in the Quote and includes without limitation: service and trademarks; logos, designs, domain names, patents, copyrights, inventions, know-how or trade secrets, software, finance, algorithms, circuit layouts, code snippets and associated specifications and anything analogous to the above under statute or law in any applicable jurisdictions, whether registered or otherwise.
 - i. "Invoice" means a document issued by the Company identifying an amount due to be paid by the Customer in accordance with the Quote, and may be the entire or part of the Price and may be subject to GST, GST Free or GST exempt as applicable in accordance with the GST Law including being a Tax Invoice.
 - j. "PPSA" means the Personal Property Securities Act 2009 (Cth) including any regulations made under that Act.
 - k. "PPSR" means the Personal Properties Securities Register established pursuant to the PPSA.
 - l. "Price" means the total price for all Goods and Services detailed in the Quote. All prices exclude GST and the GST shown in Tax Invoices issued by the Company shall be paid by the Customer.
 - m. "Quote" means a detailed description of work issued by the Company ("the works") to the Customer for a particular price and / or rates, subject to these Terms and Conditions whether or not described as a quote. A quote includes variations to an original proposal.
 - n. "Services" means services (including labour) to be supplied by the Company as set out in a Quote.
 - o. "Tax Invoice" has the meaning contained in GST Law
 - p. "SOP Act" means the Building and Construction Industry Security of Payment Act 1999 (NSW) and corresponding legislation in other states and territories.
 - q. Security Agreement, Commingled Goods, Financing Statement, Financing Change Statement, Collateral, Notice of Objection, Personal Property, Purchase Money Security Interest, Registration and Security Interest have the meanings prescribed to them in the PPSA.
2. The Customer's acceptance of a Quote constitutes an agreement whereby:
 - a. The Customer acknowledges that the entire Quote has been accepted and the works specified in the Quote will be carried out in accordance with the Quote;
 - b. Any order issued by the Customer relating to the Quote including any variation agreed to in writing, is subject to these Terms and Conditions.
 - c. These Terms and Conditions are incorporated into the Quote and into all requests, offers, instructions, purchase orders, sales confirmations, order confirmations and agreements with respect to the sale of Goods and / or Services to the Customer. All other Terms and Conditions save for those set out in the Quote are expressly excluded, provided that this paragraph does not apply to Consumer Guarantees.
 - d. The Customer acknowledges that all prices in the quote are in Australian Dollars and are based on an exchange rate of \$1.00 AUD (Australian Dollar) equal to or exceeding \$0.75 USD (United States Dollars). The Price may be increased as the exchange rate falls so that \$1.00 AUD is less than \$0.75 USD
3. Agreements comprising an accepted Quote issued in NSW are governed by and construed in accordance with the laws of New South Wales; all other agreements shall be governed and construed in accordance with the laws of Victoria.
4. Each party acknowledges and agrees that these Terms and Conditions, including its related Quote and applicable documentation, is the entire agreement and no oral or written representations, warranties, specifications or other analogous matters form part of these Terms and Conditions, other than those required by law.
5. Where the Quote is for supply only, the Company will supply tested hardware only and agrees to be to the standard required by the Company for work to be performed by the Customer such standard to ensure that works including equipment provided by the Customer will not, or do not, degrade or inhibit the performance of the Goods and / or Services provided by the Company. The Customer agrees to provide test reports on cabling prior to fit-off.
6. Where the Quote is for supply and install the Company will supply tested hardware, provide cabling, terminate, test and fit-off.

7. Unless otherwise provided in the Quote:
 - a. The Company will commission the system,
 - b. The Company will provide a trainer for staff training along with all appropriate manuals.
 - c. The Company may issue an Invoice based on works completed or to be completed during a calendar month on or about 25th of a month.
8. The Quote does not (unless otherwise noted) include:
 - a. ACMA (formerly ACA) licences;
 - b. Chasing of walls, conduit, trays and ladders, Site allowances, Monitoring, Racking, cabinets and specialised mounting brackets and telecommunications;
 - c. GPO's and 240V cabling;
 - d. Trenching; Concrete works; Penetrations, coring, cutting and fitting of locks "by others", painting and making good;
 - e. Access control and other equipment for boom gates, roller doors and roller door controllers;
 - f. Computer hardware and software;
 - g. Scissor lifts, booms & other access equipment;
 - h. Detection loops & associated detectors & associated with these loops and
 - i. After hours labour including where required as a result of works by others not being completed within schedule.
9. The Customer agrees to ensure that:
 - a. The Company is invited to attend site and other meetings relating to the works to assist in the timetabling of the installation;
 - b. The Company is given 4 weeks' notice to attend the site for installation, commissioning or training or site meetings;
 - c. It provides TCP/IP connectivity and only where such is not available a phone line for software support;
 - d. It provides a phone line for external security monitoring (if required);
 - e. It will supply all messaging and/or configuration information in agreed format prior to commencement of fit-off;
 - f. Cabling from other interfaces to Nurse Call or Security Server or other systems provided by the Company, are to be provided by the respective suppliers of the equipment – and the Customer will ensure that such cabling is to the Company's specifications, working and terminated at the Nurse Call or Security Server or other such systems.
10. Any Quote issued by the Company is valid for 90 days from the issue date; after 90 days, unless otherwise advised in writing by the Company, the Quote is withdrawn and invalid.
11. Neither party shall assign its rights under these Terms and Conditions without the prior written consent of the other.
12. Quotes are based on the documentation provided by the Customer (including drawing and/or plan files in AutoCAD 2007 format) for new construction only.
13. The Customer acknowledges that:
 - a. The Company retains ownership of the Goods until the Price has been paid in full but the risk shall pass to the Customer on delivery to the Customer's premises (or to a site designated by the Customer, even if not owned by the Customer) and that the Customer assumes all risk, liability for loss, damage or injury to persons or property or third parties arising out of the use, installation, storage or possession of any of the Goods sold by the Company, unless recoverable from the Company on the failure of a Statutory Guarantee under the ACL.
 - b. The relationship between the Customer and the Company shall be fiduciary and until such time as ownership of the Goods passes to the Customer the Customer shall hold the supply as Bailee for the Company,
 - c. The Company may give notice in writing to the Customer to return the Goods or any of them to the Company and on such notice the Customer's right to obtain ownership or any other interest in the Goods shall cease, and the Customer will return the Goods to the Company within 7 days of the notice.
 - d. The Customer will not:
 - i. Make or allow to be made any alterations or additions to the Goods;
 - ii. Remove, obscure or deface any identifying mark, label or device on the Goods;
 - iii. Purport or attempt to sell or on-hire the Goods, dispose of or charge or encumber the Goods;
 - iv. If despite the preceding clause iii, the Customer supplies any of the Goods to any person before the ownership has passed to it, the Customer agrees that it holds the proceeds of the re-supply on trust for the Company and it will on receipt pay such to the Company.
 - v. In addition to any rights the Company may have under Chapter 4 of the PPSA the Company is entitled at any time until title in and to the Goods passes to the Customer to demand the return of the Goods and, except where the Customer is a consumer, is entitled without notice to the Customer, to enter any premises occupied by the Customer (or to where the Customer has required the Company to ship, deliver, supply the Goods) in order to search for and remove the Goods. In the event of inconsistency between the Company's rights under this clause and Chapter 4 of the PPSA, this clause prevails.
 - vi. If the Customer fails to pay any amount due or there is any matter likely to adversely affect the trading ability or asset position, then in addition to any other rights it may have, the Company can:
 - a. Withhold delivery on any further Goods ordered by the Customer but not yet delivered and / or
 - b. Cancel the Customer's credit account.
14. The Customer acknowledges and agrees that:
 - a. These Terms and Conditions are a Security Agreement that creates a Security Interest in favour of the Company and in all Personal Property in all present and future Goods supplied by the Company to the Customer and to the proceeds of the Goods including any Commingled Goods.
 - b. The Customer agrees to and does grant to the Company a Purchase Money Security Interest in relation to the Goods supplied to the extent that it secures payment of the amounts owing in relation to those particular Goods and (to the extent permitted by law) Services.
 - c. The Company can, without notice to the Customer, seek Registration of its Security Interest on the PPSR.
 - d. The Customer will do whatever is necessary to:
 - i. Ensure that any Security Interest created under these Terms and Conditions is enforceable, perfected and otherwise effective; or
 - ii. Enable the Company to apply for any registration including (without limitation) a Financing Statement or Financing Change Statement on the PPSR or give any notification in connection with any Security Interest so that the Security Interest has the priority required by the Company; or

- iii. Enable the Company to exercise rights in connection with the Security Interest.
 - e. The Customer will not register a Financing Change Statement or make a demand to alter the Financing Statement pursuant to section 178 of the PPSA in respect of the Goods and Services.
 - f. It will procure from any persons considered by the Company to be relevant to its security position, such agreement and waivers as the Company may at any time reasonably require.
 - g. It will indemnify the Company against any costs it incurs in maintaining the Company's Security Interest in the Goods and Services or such other Personal Property under the PPSA & any costs the Company may incur in the course of enforcing any of its rights under these Terms and Conditions, the PPSA or at law generally.
 - h. It will give the Company not less than 14 days written notice of any proposed change in their name and/or any other changes in their details (including but not limited to, changes in their address, facsimile number, email address, trading name or business practice).
 - i. The Security Interest arising under this clause attaches to the Goods and Services when collected or dispatched from the Company's (or its suppliers') premises and not at any later time.
15. Pursuant to section 275(6) of the PPSA the Customer agrees that the Company is not required to disclose to an interested person, information relating to the Company's Security Interest unless required to do so pursuant to the PPSA or at law.
 16. The Company and the Customer agree to contract out of, and nothing in the following provisions will apply to these Terms and Conditions, namely sections 96, 125, 129, 142, 143 of the PPSA.
 17. If Chapter 4 of the PPSA would otherwise apply to the enforcement of the Security Interests created under these Terms and Conditions, the Customer agrees to waive any rights to receive notifications, verifications, disclosures or other documentation specified under the following sections of the PPSA: sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157.
 18. Where the Company has rights in addition to those under Chapter 4 of the PPSA those rights will continue to apply.
 19. Until ownership of the Goods passes, the Customer must not give the Company a written demand or allow any other person to give the Company a written demand requiring the Company to register a financing change statement under the PPSA in relation to the Goods or enter into or allow any other person to enter into the PPSR a Financing Change Statement under the PPSA in relation to the Goods and to the extent permitted by law.
 20. The Customer and the Company agree that neither of them will disclose to an "interested person" as defined in section 275(9) of the PPSA or any other person referred to in section 275(1) of the PPSA.
 21. Payment Terms are those indicated on the Quote or where none indicated:
 - a. For the first Invoice in accordance with an agreement, 7 days after the date of issue,
 - b. For each Invoice thereafter, 30 days after the date of Invoice.
 - c. Payment must be by EFT to nominated bank account in accordance with Payment Terms. Payment Terms on the Quote may include COD or cash with Order. Payment for Goods using a credit card will attract a 1.5% (3% for American Express and Diners Club) surcharge at the time of payment.
 - d. If a payment tendered by the Customer is not honoured upon presentation, the Customer will pay the Company the sum of \$30.00 (to cover Bank Penalty Fees) in respect of each presentation which the Company can debit to the Customer's account.
 22. Where Payment Terms are not met, all moneys outstanding become immediately due and payable and will incur interest at 10% pa from the date that the amount is due until payment is made.
 23. The Customer and the Company agree that the Customer must advise the Company in writing within 14 days of receipt of any Invoice that it disputes any part of the Invoice and the details of the part so disputed. Where no such notice is received by the Company, the Customer shall be deemed to have accepted that the Invoice is correct and the amount shown on the Invoice is due and payable in accordance with the Payment Terms.
 24. If the Customer refuses Delivery of Goods (except according to the ACL), the Company may charge:
 - a. The price indicated on the Quote or if none indicated, the Company's price list, together with interest at the rate of 10% pa from the date of refusal till payment;
 - b. Any additional costs reasonably incurred by the Company including such as carriage, storage and insurance costs in relation to the Goods.
 25. The Customer expressly agrees and acknowledges that it is a condition of the Company accepting an order from the Customer in relation to the Quote, including where payment is on terms other than COD, that the Customer's Order is subject only to these Terms and Conditions (including any contained in the relevant Quote) in relation to any supply by the Company of Goods and / or Services and the Customer acknowledges that these Terms and Conditions will prevail over the Terms and Conditions of purchase or other order terms of the Customer.
 26. Any period or date for delivery of Goods and / or provision of services stated by the Company is an estimate only and not a commitment. The Company will use its best endeavours to meet any estimated dates for delivery of goods or provision of services but will not be liable for damage suffered by the Customer or any third party for failure to meet any estimated date. If the Company cannot complete by the estimated date, it will do so within a reasonable time.
 27. The Customer agrees to accept substitution of Goods specified in the Quote by the Company where such are of equal or better quality and will ensure that the works specified in the Quote will be carried out.
 28. The Customer acknowledges that in relation to the Intellectual Property:
 - a. The Company owns the IP;
 - b. The Customer disclaims interest in the IP;
 - c. It will not challenge the validity of the IP and
 - d. It will not take any action prejudicial to the IP.
 29. Each party agrees to keep all information of the other party that is of a confidential nature which is disclosed in relation to these Terms and Conditions in strict confidence. A party must only use the other party's confidential information for purposes necessary to comply with, or enjoy a benefit conferred by, these Terms and Conditions.
 30. Nothing in these Terms and Conditions is intended to exclude, restrict or modify rights which the Customer may have under the ACL or otherwise which may not be excluded, restricted or modified by agreement. If any provision of these Terms and Conditions is invalid under any applicable law, that provision is enforceable to the extent that it is not invalid, whether it is in serviceable terms or not.

31. If the Customer is not a Consumer, then to the extent permitted by law, all conditions, warranties and liabilities, implied, statutory or otherwise not contained in these Terms and Conditions (or in any written warranty statement provided by the Company with the Goods ("Supplier Warranty")), are excluded. This clause does not limit the Company's liability to a Customer who is a Consumer.
32. If the Customer is a Consumer, then the Goods and Services come with guarantees that cannot be excluded under the ACL such as (without limiting the ACL) that the:
 - a. Goods are of acceptable quality, fit for the purpose described and are free from faults and
 - b. Services are provided with due skill and care.
33. Where the guarantees in clause 31 is not met in relation to Goods, the Customer is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage and repair or replaced if not of acceptable quality and failure is not major.
34. Where the guarantee in clause 31 is not met in relation to Services, the Customer may be entitled to the Service resupplied or to payment for the cost of resupply by another or to compensation.
35. If the Customer is a Consumer, then in relation to Goods, the payment of any amount required under section 274 of the ACL, is the absolute limit of the Company's liability to the Customer howsoever arising under or in connection with the Quote or these Terms and Conditions including, without limitation, any damages and / or loss of profits claimed by any party.
36. If the Customer is a Consumer, then in relation to Services, the payment of any amount required under section 275 of the ACL, is the absolute limit of the Company's liability to the Customer howsoever arising under or in connection with the Quote or these Terms and Conditions to the Customer including, without limiting, any damages and / or loss of profits claimed by any party.
37. If the Customer is not a Consumer then in relation to Goods, the amount specified in section 276A(1) of the ACL is the absolute limit of the Company's liability to the Customer however arising under or in connection with the Quote and / or these Terms and Conditions.
38. If the Customer is not a Consumer, Goods will not be accepted for return for reasons other than defects without the prior agreement of the Company. Where the parties agree that Goods may be returned, a handling fee of \$30.00 or 20% of the value of the Goods (whichever is the higher) may be charged by the Company to the Customer.
39. The Company is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to, loss of turnover, profits, business or goodwill or any liability to any other party, except to the extent of any liability imposed by the ACL.
40. If any provision of these Terms and Conditions is invalid under any applicable law, that provision is enforceable to the extent that it is not invalid, whether it is in serviceable Terms and Conditions or not.
41. Credit limits are as approved by the Company at its absolute discretion and notified to the Customer pursuant to the Customer's application provided that the Company may vary the credit limits and these Terms and Conditions generally at any time on written notice to the Customer in accordance with following clause 42.
42. The Company may vary these Terms and Conditions (including withdrawal of credit) by providing written notice to the Customer, such variation to take effect for all orders placed by the Customer after receiving such notice. By ordering more Goods and/or Services from the Company after receiving notice of a variation to these Terms and Conditions, the Customer accepts and is bound by such variation from that date.
43. In addition to any other rights the Company may have, where the Customer is in breach of an agreement in accordance with clause 2 of these Terms and Conditions, the Company may vary these Terms and Conditions in respect of any Orders relating to that agreement that are either partially or unfulfilled, by notice to the Customer, and by accepting Goods and/or Services as part of such partially or unfulfilled Orders, the Customer accepts and is bound by such variation from the date it receives the notice or the Goods and/or Services whichever is the earlier. The issue of such a variation by the Company does not constitute a waiver of the breach of Contract.
44. Any notice required to be given under these Terms and Conditions or agreement, shall be deemed properly given if sent by facsimile to the number provided by the Customer, sent to an email address provided by the Customer, sent by courier, or pre-paid post, to the last known address of the party giving notice and, if posted, shall be deemed to have been given on the day following posting.
45. The Company shall not be liable for a default or failure of obligations pursuant to these Terms and Conditions and conditions resulting directly or indirectly from a Force Majeure Event.
46. Force Majeure Event means an act of God, act of civil or military authority, act of public enemy, war, accident, fire, explosion, earthquake, flood, the elements, strike, labour dispute, shortage of suitable parts, materials or any other event beyond the reasonable control of the Company.

The failure by the Company to insist on strict performance of an agreement including any Terms and Conditions, or any delay in exercising any of its rights or remedies does not constitute a waiver or variation of these Terms and Conditions