



REDARC'S TRADING TERMS

The following terms and conditions ("**Trading Terms**") apply to all purchases of goods and/or services by you, (the "**Purchaser**"), from Redarc Electronics Pty Ltd (ACN 009 971 794) at the Redarc Trust trading as Hummingbird Electronics ("**Redarc**"). Placing an order with Redarc will constitute deemed acceptance by the Purchaser of these Trading Terms. Modifications of or deviations from these Trading Terms must be agreed in writing by Redarc.

1. Orders

- 1.1. Orders will be initiated by you making a request for stock from Redarc. When placing an order with Redarc, you will comply with any ordering procedures (including the required form of any order) notified to you from time to time by Redarc.
- 1.2. Redarc reserves the right to accept or reject any order in whole or in part for any reason, including without limitation the unavailability of any products.

2. Quotations

- 2.1. Quotations are not valid unless they are provided to the Purchaser in writing.
- 2.2. All quotations provided to the Purchaser by Redarc in writing are open for acceptance for a period of 30 days from the date of the quotation. Acceptance must be in writing and signed by the Purchaser within that time period.
- 2.3. If the quotation is not accepted in writing within that period the offer in the quotation will lapse.
- 2.4. Until the quotation is accepted by the Purchaser, Redarc reserves the right to withdraw the quotation or to vary or alter any part, including without limitation any price or fee specified in the quotation.
- 2.5. The Purchaser agrees to be bound by the Contract, which becomes binding on the Purchaser when Redarc receives the Purchaser's unconditional acceptance of the quotation in writing and which quotation shall constitute an invoice.
- 2.6. The Purchaser cannot cancel an order after acceptance of a quotation without the written agreement of Redarc.

3. Data errors and omissions

Redarc makes every effort to ensure the accuracy of information shown in Redarc's documents, including without limitation its catalogues or databases. Such information may contain technical inaccuracies or typographical errors. Redarc makes no representation or warranty as to the accuracy of any information.

4. Pricing and payment

- 4.1. Redarc will invoice all orders at its current prices, which may alter with written notice to the Purchaser. The Purchaser agrees to pay the Purchase Price for the goods and/or services supplied to the Purchaser by Redarc.
- 4.2. All goods and/or services are supplied COD unless otherwise agreed in writing. The Purchase Price for goods and/or services supplied under a COD arrangement must be paid to Redarc upon delivery of the goods and/or services.
- 4.3. If requested by Redarc, payment by cash or equivalent must be received by Redarc before processing an order.
- 4.4. If goods and/or services are supplied to a Purchaser on credit by way of a Credit Account:
 - 4.4.1. such credit is offered subject to the conditions set out in Redarc's application for Credit Account form; and
 - 4.4.2. payment of the Purchase Price is strictly required 30 days from the end of the month of the date of the Invoice issued by Redarc.
- 4.5. The Purchaser is not entitled to withhold payment in whole or in part, or claim any right to set off in respect of the Purchase Price.

5. Interest

- 5.1. If the Purchase Price or any part of the Purchase Price remains unpaid after the payment date required by the Contract, the outstanding Purchase Price shall be subject to interest at the rate that is three percent (3%) per annum above the rate charged from time to time by Redarc's principal banker for unsecured overdrafts of less than \$100,000.
- 5.2. Interest accrues from day to day, from the day the Invoice was issued by Redarc until and including the day the Invoice is paid in full. Any amount of interest, together with the outstanding Purchase Price is payable by the Purchaser on receipt of a written demand from Redarc. The Purchaser agrees to pay such interest levied from time to time.

6. Credit Accounts

- 6.1. Redarc may refuse to supply goods and/or services to the Purchaser if there is an Event of Default.

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- 6.2. Upon the occurrence of an Event of Default all outstanding amounts become payable immediately, notwithstanding the terms of the Credit Account.
- 6.3. The Purchaser agrees that Redarc, in its absolute discretion, may withdraw or vary the Credit Account facility at any time.
- 6.4. The Purchaser agrees to pay on demand all sums owing in connection with the Credit Account at any time.
- 6.5. If there is a change in ownership of the Purchaser which in the reasonable opinion of Redarc is considered to be material, Redarc may withdraw the Credit Account facility in accordance with clause 6.3 and require that the Purchaser submit a new Credit Account application form.

7. Ownership and risk

- 7.1. All risk in the goods will pass to the Purchaser when the goods leave Redarc's premises, regardless of how delivery is effected.
- 7.2. Ownership of each unit of the Goods will remain with Redarc until all amounts owing by the Purchaser to Redarc on any account whatsoever (including the Purchase Price for the Goods) (**Amounts Owing**) have been paid.
- 7.3. Until the Amounts Owing have been paid, the Purchaser:
 - 7.3.1. may, subject to clause 7.4, take possession of the Goods and hold them as trustee and agent for Redarc;
 - 7.3.2. must ensure that the Goods are insured and stored or identified so that they are readily distinguishable from other goods held by the Purchaser or other persons.
- 7.4. Until the Amounts Owing have been paid, the Purchaser has the right to move, sell and otherwise use the Goods in the ordinary course of its business, subject to the following:
 - 7.4.1. the Purchaser may sell the Goods, but only as trustee and agent for Redarc; and
 - 7.4.2. the Purchaser must hold the proceeds it receives from any sale of the Goods as trustee and agent for Redarc; and
 - 7.4.3. the Purchaser must place the whole of the monetary proceeds in an account separate from its own monies and maintain proper records of that account; and
 - 7.4.4. if the Goods become part of a product or mass through manufacturing, processing, assembly or becoming commingled, Redarc's security interest continues in that product or mass (**Commingled Property**) to the extent permitted by law.
- 7.5. Despite clause 7.4.1, the Purchaser must not represent to any third parties that it is acting as agent of Redarc and Redarc will not be bound by any contracts with third parties to which the Purchaser is a party.
- 7.6. If the Purchaser fails to comply with any part of these Trading Terms in relation to the payment of any Amount Owing or otherwise, then:
 - 7.6.1. immediately on Redarc's request the Purchaser must return to Redarc any Goods acquired from Redarc on which there are outstanding Amounts Owing; and
 - 7.6.2. Redarc may enter the premises at which those Goods are stored, and seize possession of them; and
 - 7.6.3. Redarc may retain, sell or otherwise dispose of those Goods.
- 7.7. The Purchaser must not assign or grant a security interest in respect of any accounts owed to it in relation to the Goods without Redarc's prior written consent.
- 7.8. Without limiting the meaning of Amounts Owing, if the Purchaser makes a payment to Redarc at any time whether in connection with these Trading Terms or otherwise Redarc may, at its absolute discretion, apply that payment to first satisfy obligations that are not secured, then obligations that are secured, but not by a purchase money security interest, in the order in which those obligations were incurred, and then obligations that are secured by a purchase money security interest in the order in which those obligations were incurred.
- 7.9. If Chapter 4 of the PPSA would otherwise apply to the enforcement of these Trading Terms the Purchaser agrees the following provisions of the PPSA will not apply to the enforcement of these Trading Terms: section 95 (notice of removal of accession), to the extent that it requires Redarc to give a notice to the Purchaser; section 96 (when a person with an interest in the whole may retain an accession); subsection 121(4) (enforcement of liquid assets – notice to grantor); section 125 (obligation to dispose of or retain collateral); section 130 (notice of disposal), to the extent that it requires Redarc to give a notice to the Purchaser; paragraph 132(3)(d) (contents of statement of account after disposal); subsection 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (reinstatement of security agreement).

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- 7.10. Notices or documents required or permitted to be given to Redarc for the purposes of the PPSA must be given in accordance with the PPSA.
- 7.11. The Purchaser consents to Redarc effecting a registration on the PPSA register (in any manner Redarc considers appropriate) in relation to any security interest contemplated by these Trading Terms and the Purchaser agrees to provide all assistance reasonably required to facilitate this. The Purchaser waives the right to receive notice of a verification statement in relation to any registration on the register.
- 7.12. In this clause 7:
- 7.12.1.a reference to **Goods** means the original goods supplied as described in each Invoice and also includes proceeds and Commingled Property when the context permits;
- 7.12.2. **paid** means receipt of cash or cleared funds by Redarc in full satisfaction of the Amounts Owing;
- 7.12.3. **PPSA** means the Personal Property Securities Act 2009 (Cth) and any regulations made pursuant to it;
- 7.12.4. the following words have the respective meanings given to them in the PPSA: account, commingled, proceeds, purchase money security interest, register, registration, security interest and verification statement.

8. Delivery

- 8.1. Redarc makes no warranty as to time of delivery or the availability of any goods. The estimated time frame for delivery of goods as specified in the quotation is based on the best estimates of Redarc at the time of quotation. Redarc will use its reasonable endeavours to effect delivery by the estimated time frame, but does not guarantee that delivery will be effected by such time, and Redarc is not responsible for any delays in delivery.
- 8.2. Redarc may, by notice in writing to the Purchaser, extend the period for delivery, change the delivery schedule or cancel an order without liability to the Purchaser for any loss or damage of any kind.
- 8.3. Redarc may deliver the goods in part with written notice to the Purchaser. If goods are delivered in part pursuant to such notice, the Purchaser must accept the part-delivery and pay the percentage of the Purchase Price represented by the goods delivered.
- 8.4. Goods will be delivered to the address specified in the order and/or Invoice and the Purchaser will pay all delivery costs to Redarc in accordance with clause 4.
- 8.5. The delivery of any goods will be conducted at the Purchaser's sole risk. Redarc is not responsible for the destruction, damage or loss of goods in transit. It is the responsibility of the Purchaser to arrange and pay for transit insurance if required.
- 8.6. For the avoidance of doubt, the Purchaser will bear all risks in relation to the destruction, loss or damage of any goods at all times from the time any goods are dispatched by Redarc to the Purchaser.

9. Return of goods

- 9.1. The Purchaser must notify Redarc in writing within 10 days of receipt of the goods by the Purchaser ("**Return Period**") of any fault or defect in the delivered goods ("**Rejection Notice**"). The Purchaser will be deemed to have accepted delivered goods unless Redarc receives a Rejection Notice within the Return Period. The Purchaser waives any right to reject or revoke acceptance after that time.
- 9.2. Redarc will not provide a refund for any returned goods purchased from Redarc unless the goods contain a manufacturer's fault or defect.
- 9.3. All goods returned for refund or credit must:
- 9.3.1. be a standard item that Redarc has in stock on a regular basis;
- 9.3.2. except for faulty or defective goods, be accompanied by original packaging, remain unused and in original condition;
- 9.3.3. be accompanied by the original proof of purchase or other relevant original documentation.
- 9.4. Freight to and from Redarc on all returns is to be borne by the Purchaser. Handling charges or freight for the return of goods, if not prepaid, will be deducted from the total amount of credit or refund or otherwise charged to the Purchaser.
- 9.5. Provided that clause 9.3 is satisfied, the Purchaser may return goods for a credit note, or at the sole absolute discretion of Redarc a refund, within the Return Period. An inspection and re-stocking charge of 15% calculated on the Invoice value of the returned goods shall apply.
- 9.6. After the expiration of the Return Period Redarc, may in its sole absolute discretion permit the Purchaser to return non-faulty goods for credit. Non-faulty goods may only be returned if the Purchaser satisfies clause 9.3. All non-faulty

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goods accepted by Redarc after the Return Period expires will incur an inspection and re-stocking charge which will be calculated on the Invoice value of the returned goods as follows:

- 9.6.1. goods returned within 15 days after the expiration of the Return Period will incur a 20% charge;
- 9.6.2. goods returned within 45 days after the expiration of the Return Period will incur a 25% charge;
- 9.6.3. goods returned 45 days or more after the expiration of the Return Period will incur a 30% charge.

9.7. In the case of all goods returned to Redarc, Redarc is under no obligation to issue a refund or credit note to the Purchaser if the Purchaser owes any money to Redarc.

10. Warranties and release

- 10.1. Redarc gives the warranties specified in the Warranty as being given by Redarc, and subject to and to the maximum extent permitted by law, excludes all other warranties in relation to the goods, whether express or implied, including without limitation any warranty regarding merchantability or fitness for a particular purpose.
- 10.2. To the maximum extent permitted by law, Redarc excludes all liability in respect of the goods. To the extent that Redarc is not able to exclude liability under law, then to the maximum extent permitted by law Redarc's liability under the Warranty or otherwise in respect of the goods is limited as in accordance with the Warranty.
- 10.3. Other than specifically stated in these Trading Terms and to the maximum extent permitted by law, Redarc is not liable for and the Purchaser hereby releases Redarc from any consequential loss or damages of any type including without limitation incidental, special, indirect, punitive or otherwise, including loss of profit, whatever the claim (tort, breach of contract or warranty or otherwise) and whatever the forum, whether arising out of or in connection with the goods or any other cause whatsoever.
- 10.4. The Purchaser releases Redarc from all liability, in respect of personal injury or death or damage or loss of property of any person including the Purchaser or the Purchaser's employees agents or contractors, arising wholly or in part from the Purchaser's acts, omissions, negligence, breach of duty, breach of contract, or breach of the Contract.
- 10.5. In any event and without limiting the generality of the foregoing, Redarc's liability for any breach of a term, condition or warranty not excluded by the Contract will be limited to the replacement of goods delivered or the payment of the cost of replacing the goods or acquiring equivalent goods from an alternate supplier and/or the resupply of any services rendered or the cost of having those services resupplied.

11. Purchaser's acknowledgement

- 11.1. The Purchaser acknowledges that it has the sole responsibility of satisfying itself that the goods supplied by Redarc are suitable for the use of the Purchaser or any contemplated use of the Purchaser and that it has conducted its own investigations and has not relied upon any information, statement, advice or representation by Redarc of or in relation to:
 - 11.1.1. the operating and/or performance parameters of the goods;
 - 11.1.2. the outcomes that the goods may achieve;
 - 11.1.3. the suitability of the goods to any particular application, installation or physical environment; and
 - 11.1.4. the appropriateness of the use of the goods outside Australia.
- 11.2. The Purchaser acknowledges and agrees that:
 - 11.2.1. any representation as to the operating parameters of the goods provided by Redarc are representative of laboratory conditions;
 - 11.2.2. the actual performance of the goods in situ might be affected by external factors (including without limitation environmental conditions) beyond Redarc's control;
 - 11.2.3. incorrect and/or negligent installation, application or use of the goods may cause loss of life, injury and/or damage to property; and
 - 11.2.4. Redarc makes no representation, warranty or assurance as to any of the matters listed in clause 11.1 and that Redarc shall not be liable for any loss or cost arising from those matters to the maximum extent permitted by law.

12. Intellectual Property

- 12.1. The Purchaser must not deface or remove any mark, label or plate affixed by Redarc on the goods.
- 12.2. The Purchaser acknowledges that all Intellectual Property in the goods is the property of Redarc.
- 12.3. The Purchaser must not and must not cause, permit or assist any other person directly or indirectly to:

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- 12.3.1. copy any Intellectual Property in the goods or record or replicate it by any other means;
- 12.3.2. make copies of or replicate the goods;
- 12.3.3. translate, reverse engineer, decompile or disassemble the goods; or
- 12.3.4. copy, publish, disclose or distribute any documentation associated with the goods (including without limitation, operating instructions and manuals).

13. Indemnity

The Purchaser shall be responsible for and indemnify and hold harmless Redarc from and against all Claims, damages, costs (including without limitation legal costs on a full indemnity basis), losses, liabilities and expenses caused by the Purchaser's acts, omissions, negligence, breach of duty, breach of contract, or breach of the Contract.

14. Privacy

Redarc will use all information collected from you in accordance with Redarc's Privacy Policy. A copy of this policy is available on Redarc's website www.redarc.com.au or from Redarc upon request.

15. Taxation and Duties

Any amounts payable to Redarc are exclusive of GST unless specified otherwise. Any government charges or duties, including sales tax, GST, use or excise taxes or similar taxes, are payable by the Purchaser.

16. Variation of Terms

Redarc reserves the right to change any of these Trading Terms at any time in its sole discretion, to be effective on written notice to the Purchaser. The Purchaser may accept changes to these Trading Terms by continuing to trade with Redarc. If the Purchaser does not agree to any changes, any Credit Account that the Purchaser may have with Redarc will be terminated.

17. Miscellaneous

- 17.1. If any term of the Contract is void, voidable or unenforceable, the term will be read-down, limited or, if necessary, excluded to the extent necessary to make it not void, voidable or unenforceable, and all other terms will remain in full force and effect.
- 17.2. Any waiver or relaxation by Redarc partly or wholly of any provision of or right under the Contract:
 - 17.2.1. is only valid if in writing and signed by Redarc;
 - 17.2.2. applies to a particular occasion only;
 - 17.2.3. is restricted to its written terms;
 - 17.2.4. is not continuing nor of application generally unless expressed so to be; and
 - 17.2.5. does not constitute a waiver or relaxation of any other term or condition.
- 17.3. The Contract:
 - 17.3.1. constitutes the entire agreement between Redarc and the Purchaser; and
 - 17.3.2. may not be varied or waived except agreed to in writing by Redarc.
- 17.4. No course of dealing or performance, usage of trade or failure to enforce any term will or will be construed to modify the terms of the Contract.
- 17.5. The Contract is governed by and construed in accordance with the law from time to time in the State of South Australia and the Purchaser agrees to submit to the non-exclusive jurisdiction of the courts of South Australia and the courts which hear appeals from them.

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18. Definitions

In these Trading Terms:

Claims means any cost, demand, legal proceedings, claims, actions, fines, penalties, obligation or liabilities of any nature;

Contract means:

- (a) the quotation;
- (b) the application for Credit Account form (if any);
- (c) the Warranty; and
- (d) these Trading Terms,

to be read as one document, the contents of which, in the case of ambiguity or inconsistency, will be given precedence in interpretation in the order of paragraphs (a) to (d) above;

Credit Account means the Purchaser's credit facility with Redarc;

Event of Default means:

18.1.1. the Purchaser fails to pay the Purchase Price or any part of the Purchase Price outstanding and any accrued interest within two business days of receiving a written demand from Redarc;

18.1.2. the guarantees provided by the directors or proprietors of the Purchaser are not binding or any person alleges that the guarantees are not binding;

18.1.3. the Purchaser commits an act of Insolvency; or

18.1.4. the Purchaser ceases to carry on business;

GST means a tax, duty, levy, charge or deduction, imposed by GST Law and any related interest, penalties, fines or other charges;

GST Law means the A New Tax System (Goods and Services Tax) Act 1999, or any other act imposing a goods and services tax in Australia;

Insolvency means:

- (a) the Purchaser, not being a company committing an act of bankruptcy, making a proposal to its creditors for a composition or arrangement under the Bankruptcy Act or if any other act or event occurs that would entitle a petition for a bankruptcy order to be made;
- (b) the Purchaser, being a company, having a receiver or administrator appointed or doing, or omitting to do anything which would permit such an appointment to occur.

Intellectual Property includes the rights comprised in any patent, copyright, future copyright, design, trade mark, eligible layout, business name, brand name, trading style or similar right whether at common law or conferred by statute and includes rights to apply for registration under a statute in respect of those or like rights as well as rights to protect trade secrets, know-how, confidential information or unpatented production methods or technical information throughout the world for the full period of the rights and all renewals and extensions and all other rights with respect to intellectual property as defined in Article 2 of the July 1967 Convention Establishing the World Intellectual Property Organisation;

Invoice includes any invoice issued to the Purchaser for goods and/or services supplied to the Purchaser by Redarc (including without limitation an invoice in the form of a quotation that has been accepted by the Purchaser, in accordance with clause 2.5);

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Purchase Price means the amount or amounts specified in the Invoice and includes the actual cost of delivery of the goods to the Purchaser including any additional or unforeseen costs due to any delay, misinformation or error caused or contributed to by the Purchaser and GST in relation to the goods and services supplied pursuant to the Invoice;

Warranty means the document entitled "Warranty" provided with goods supplied by Redarc.

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