

# Reseller Application - Cash Terms Only

Sektor Ltd

525 Great South Road, Penrose, Auckland 1061. Ph: 09 579 9855 www.sektor.co.nz



## CUSTOMER DETAILS

Registered Company Name

Company Incorporation No: Incorporation Date:



## BILLING ADDRESS

PO Box/Street



Suburb

City

P/Code

## ACCOUNTS DETAILS

Position

Contact Name

Office Phone

Mob

Email

Office Phone

Mob

Email

Contact Name

Office Phone

Mob

Email

Office Phone

Mob

Email</

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## 1. GENERAL

**These Terms:** The supply of Goods under a Purchase Order (**PO**) accepted by Sektor Ltd (NZBN: 9429032411904) (**Company, Us, We, Our**) to the Customer (**You, Your**) will be subject to these Terms and Conditions of Sale (**Terms**).

**Variation:** No variation of, or substitution for these Terms (even if included or referred to in the PO) will be binding on Us, without Our prior written approval. To be clear, these Terms will prevail over any of Your terms and conditions including those contained in any document between Us. These Terms also supersede all prior discussions and arrangements.

We may amend these Terms by written notice to You. Such amended Terms will be by mutual agreement requiring Your re-signing of those amended Terms. PO's received after such notice but prior to mutual acceptance of the amended Terms may cause deliveries of PO's to be delayed. Any change to credit terms will be by separate advanced notice.

**Availability:** Acceptance of these Terms does not mean You will have access to all Goods. Certain Goods are classified as 'Authorised Goods' and are not available to all customers.

## 2. SEKTOR WEB ORDERING PORTAL - ORDERS AND WEB ACCESS

**Your access:** Our website, <http://www.sektor.co.nz> and Our URL's that link to Our web site provide You with access to product details, specific pricing to Your account, RMA tracking, service job tracking, the ability to view invoices and statements, along with other information helpful to You as a reseller of the Goods, via a secured logon. As this **information is confidential** and specific to You, a User ID and initial Password is required.

To access Your account portal for the first time, click on "Sign In" (<https://www.sektor.co.nz/myaccount/signin>) at the top of Our home page and follow instructions to register.

**The Sektor Web ordering portal:** These Terms apply to all orders placed by You on the Sektor web ordering portal. We may restrict access to the web ordering portal at any time without prior notice to You.

## 3. PRICES

**Changes:** Unless otherwise agreed in writing, We may vary the prices stated for the Goods, including to take account of any increase in shipping costs, product costs or cost of materials, services or exchange rate fluctuations, such price variations will apply to any PO sent to us after the date of such price variation. If we vary the price prior to acceptance of a PO we will notify you of such varied price and you may withdraw the PO (and if you do not, the price for any accepted PO will be the price as varied).

**Pricing in a PO:** We reserve the right to accept or reject any PO (written or verbal), at Our discretion. However, if a PO is accepted, We will not vary the prices without Your prior written consent.

**GST exclusive:** All prices listed are GST exclusive unless otherwise stated.

## 4. PAYMENT

**Timing:** Payment for Goods must be made prior to delivery, except as set out below.

**Payment method and fees:** Payment may be made by Electronic Funds Transfer, Visa or MasterCard. Payments accepted by credit card will incur a fee.

**Credit terms:** These Terms do not allow for payment on credit. A separate application may be made if you prefer to apply for credit terms with Us.

**NZD:** All payments must be made in New Zealand Dollars unless otherwise agreed in writing.

**No deduction or withholding:** Except as otherwise described in these Terms, You must pay all amounts under these Terms in full without any deduction or withholding, except as required by law. You must not assert any credit, set-off or counterclaim against Us, in whole or in part.

**Payment dispute:** If You dispute any invoice (in whole or in part), You must provide full details, including supporting information, of the dispute to Us. Disputes regarding invoices are deemed to be waived 20 business days following the invoice date.

## 5. DELIVERY

**Delivery location arrangements:** Delivery will be made to the location specified on the PO. You will be liable for all freight costs. You must provide reasonable access to the point of delivery for offloading of the Goods without delay. Unless otherwise agreed in writing, You are responsible for (at Your expense) providing labour or necessary equipment to ensure the Goods can be offloaded safely.

If You do not take delivery of the Goods, We may, at our discretion and without prejudice to any other rights:

- (i) store or arrange for storage of the Goods and charge You for all costs and expenses including transportation, storage and insurance;
- (ii) make arrangements for the redelivery of the Goods and charge You for the costs of redelivery; and
- (iii) after 10 business days, resell or otherwise dispose of part or all of the Goods.

**Instalments:** We may deliver the Goods in instalments. Any delay in delivery or defect in an instalment does not entitle You to cancel any other instalment.

**Damaged, lost or destroyed Goods:** If Goods are damaged in transit to You or not all Goods ordered are delivered, You must:

- (iv) promptly notify Us and the relevant carrier; and
- (v) provide a second written notification including a detailed and complete claim within 5 business days of delivery.

If Goods are lost or destroyed in transit, You must:

- (vi) notify Us and the relevant carrier within 5 business days of the consignment date (as notified by Us); or
- (vii) where the carrier's tracking notification states a delay in delivery, You must notify Us within 5 business days of the carrier's revised delivery date. For tracking purposes, You will receive the invoice for the delivery prior to the shipment being received.

Unless You notify Us and the carrier as required by this clause, We will have no responsibility to investigate or remedy any issue related to the delivery of the Goods.

**Delivery dates approximate:** Any period or dates quoted for delivery are approximate only. We accept no liability for any loss, injury, damage or expenses arising out of or in connection with any delay in delivery. Undue delay caused by any circumstance beyond Our control will not entitle You to cancel any PO or to refuse to accept delivery, unless otherwise agreed by Us in writing.

**Overseas Goods:** If We are required to procure overseas Goods to fulfil a PO, the PO is subject to confirmation by Us, and may also be subject to an import licence being available if and when required.

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## 6. INSURANCE

We will insure Goods while in transit from Our premises to the delivery address. You are responsible for insuring Goods once those Goods have been delivered to the delivery address, except where those Goods are 'Evaluation Goods'.

## 7. CANCELLATION OR CHANGE OF PURCHASE ORDER

**Cancellation or Change of PO:** Your PO is deemed to be accepted by Us within 2 business days of receipt unless We advise You otherwise. Once a PO has been accepted by Us it may not be changed or cancelled by You for any reason without Our written consent. Where We consent to a change or cancellation, we may charge a fee which represents our costs in administering such change or cancellation.

**Cancelation of Dispatched Order:** Once an order has been invoiced and dispatched by Us it may not be cancelled by You without Our written consent. An order cancelled by You will incur a re-stocking fee of \$30.00 or 15% of the invoiced value, whichever is the greater. You acknowledge that Our entitlement under this clause is reasonably proportionate to the loss that would be suffered by Us if an order is cancelled.

**Change of Delivery Date:** You agree to take delivery of any order as soon as the Goods are available unless otherwise agreed by Us in writing at the time of acceptance of your order. You may not delay delivery of any order without Our written consent and where a delay is agreed, it may be subject to a fee at Our sole discretion. You acknowledge that Our entitlement under this clause is reasonably proportionate to the loss that would be suffered by Us if delivery of an order is delayed.

## 8. RETURNS

**Returns need Our approval:** Return of any Goods that are not damaged or destroyed is subject to Our prior written consent. If We consent to a return, then (i) Goods must be returned in the manner described in this clause, and (ii) may be subject to a fee at Our sole discretion.

**RMA:** Before returning such Goods, You must request, and We must have issued, a Return Merchandise Authorisation (**RMA**). Goods will not be accepted for return by Us without the RMA number label displayed on the outer packaging of the returned Goods.

**Requirements for return and shipping method:** Goods must be returned to Us in original unmarked packaging including all original documentation and accessories. You must ensure that returned Goods are shipped to Us (in accordance with our directions) and insured (paid by You).

**Unauthorised Returns:** Unauthorised returns will be shipped back to You at Your expense (a handling fee may also apply).

## 9. OWNERSHIP

**Risk:** Risk in Goods supplied by Us passes to You on delivery to You or into custody on Your behalf.

**Title:** Title in the Goods supplied by Us pass to You in accordance with clause 4. Payment.

## 10. EVALUATION GOODS

**Evaluation Goods:** We may make evaluation goods available to You to allow You to evaluate product features and benefits prior to purchasing (**Evaluation Goods**). Insurance of the Evaluation Goods is covered by Us.

**Your responsibilities:** You must not:

- (i) leave Evaluation Goods (or allow them to be left) in the possession or control of Your customer (**End User**); or
- (ii) further install (or allow to be installed) the Evaluation Goods on trial, in each case unless agreed in writing by Us. If We agree for the Evaluation Goods to be left in the control of the End User, You must ensure that You (or the End User) insures the Evaluation Goods for full replacement value and in accordance with best industry practice.

**Time for return:** You must return the Evaluation Goods to Us within 10 business days unless purchased prior.

**Method of return:** Returned Evaluation Goods are to be shipped freight and insurance paid by You. Where Evaluation Goods have been shipped to You in brand new unopened factory condition and wrapped or shipped in an outer carton, You will return to Us either outer wrapped or packaged to preserve the original factory packaging condition. Any missing, marked or damaged packaging, product, manuals or accessories, will be charged to You in full on return. Evaluation Goods not returned according to these conditions will be charged in full to You at the end of the evaluation period.

**Freight and costs:** Freight and the pre-paid purchase cost on the order of the Evaluation Goods will be refunded in full in accordance with this clause if returned to Us within the 10 business day evaluation period.

## 11. WARRANTY

**Manufacturer's warranty (12 months):** We will pass through the benefit of any manufacturer's warranties in respect of the Goods to You. Unless otherwise stated on Our web site, or at the time of purchase, the manufacturer's warranty for all Goods will be a 12 month, return to base, parts and labour warranty (**Warranty**).

**Extended warranty:** If an extended warranty (**Extended Service Contract**) is taken on Goods, or unless otherwise stated in writing, the scope of that Extended Service Contract will be as per the standard Warranty for the extended period taken. An Extended Service Contract must be made within 30 days of the original purchase. In special circumstances an Extended Service Contract may be offered after this 30 day period but will not be available after the expiry of the standard Warranty period. If an Extended Service Contract is offered, it is to be taken on the total initial invoiced value and quantity of Goods and is to be paid in full on invoice.

**Extended Software Assurance Contract:** An 'Extended Software Assurance Contract' is available on specific software licensed Goods. If taken, unless stated in writing, the scope of the Extended Software Assurance Contract will be on the same terms as the Warranty. Extended Software Assurance Contracts are not available in conjunction with Extended Service Contracts.

**Exclusions from Warranty:** Damage caused by misuse or abuse or use that is not in accordance with Our or the manufacturer's instructions, electrical damage due to power fluctuations such as surges or spikes, incompatible consumables or software, are not covered under Warranty, and may not be covered under an Extended Service Contract or Extended Software Assurance Contract. No warranty is given in respect of consumables. Proof of Purchase must be supplied with all claims.

## 12. SECURITY INTERESTS

**Registration of security interest:** We will not register a security interest under the *Personal Property Securities Act 2009 (PPSA)* in the Goods supplied by Us to You. A separate application may be made if You prefer to apply for credit Terms with Us.

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## 13. REPRESENTATIONS AND LIABILITY

**Your representations:** When You supply the Goods to another person in the course of trade, You must not give any undertaking or make any representation in relation to the Goods other than any information which appears on any label or publication issued or approved by Us or the manufacturer or which is otherwise subject to Our prior written approval.

**Suitability:** You agree that You have made Your own assessment of the suitability of the Goods and You have not relied on any statement made by Us for such purpose.

**No responsibility:** The Company accepts no responsibility or liability for incorrect placement of POs, including orders placed via the web.

**Neither party liable for consequential loss:** Except for in respect of any breach of Our intellectual property rights by You, neither party will be liable to the other for any loss of profits, loss of revenue, loss of data, loss of business, loss of use, loss of goodwill, or for any indirect, incidental, special, or consequential damages.

**Exclusion of certain things:** Any representation, warranty, condition or undertaking that would be implied in these Terms by legislation, common law, equity, trade, custom or usage is excluded to the maximum extent permitted by law.

**Limit on Our liability:** Our liability for any other liability that has not been, or cannot be, excluded, or any breach of a condition or warranty that cannot be excluded, is limited, at Our option, to (i) re-supplying the Goods (or paying the cost of re-supplying the Goods), or (ii) repairing (or paying the cost of repairing) the Goods. Nothing in these Terms excludes, restricts or modifies any rights or remedies, or any guarantee, warranty or other term or condition implied or imposed by any legislation that cannot be lawfully excluded, restricted, modified or limited under New Zealand law.

## 14. END USER LIABILITY AND CONTRACT REQUIREMENTS

Without limiting clause 13:

- a. We are not liable, whether in contract, tort (including negligence), statute or otherwise, to You or any End User in respect of software that You have sourced from Us where the End User has entered into an End User Licence Agreement ("EULA") with a third-party software vendor; and
- b. You provide managed or professional services ("Services") to an End User in relation to that EULA, We expressly make no, and specifically disclaim all representations or warranties, express or implied, regarding any such Services provided by You to the End User; and
- c. where: (i) a EULA has been entered into by the End User and a third party software vendor for the software for which You are providing the Services; and (ii) the End User has contracted with You, for You to provide it with Services that are relevant to that EULA; and (iii) You are in breach of these Terms, then We may instruct You to assign Your rights and obligations under those relevant Services to a third party nominated in writing by Us as required by the third party software provider of the EULA. You must promptly ensure that such rights and obligations are validly assigned on receiving such instruction.
- d. You must ensure that before providing a EULA to an End User, the End User has entered into a written agreement with You which includes equivalent provisions to sub-clauses a, b, and c, above.

## 15. INDEMNITY

**Indemnity in favour of Us:** You will indemnify Us against any claims by a third party (including merchants and customers) for, damage, loss, liability or expense (including lawyers' fees on an indemnity basis) that We may incur: (a) with respect to any negligent act or omission by, or wilful misconduct by You or Your employees, agents, contractors, consultants or representatives; (b) as a result of: (i) any warranty condition, representation, indemnity or guarantee granted by You in addition to or in lieu of the limited warranties specified in the clause 11 (Warranty); (ii) any omission or inaccuracy in Your marketing and promotional materials that relate to the Goods; (iii) any modification of or addition to the Goods not provided or approved by Us, and; (iv) Your failure to comply with these Terms.

**Indemnity in favour of You:** We will indemnify You against any claims by a third party for, damage, loss, liability or expense (including lawyers' fees on an indemnity basis) that You may incur: (a) with respect to any negligent act or omission by, or wilful misconduct by Us or Our employees, agents, contractors, consultants or representatives; and (b) as a result of any omission or inaccuracy in Our own marketing and promotional materials (this does not include third party materials including manufacturers) that relate to the Goods; and (c) Our failure to comply with these Terms.

This clause does not limit any other remedies available to Us or You under these Terms.

## 16. DEFAULT AND TERMINATION

**Default by You:** If there is a default by You under these Terms, We may, without limiting any other right or claim We may have against You, immediately:

- (i) withhold delivery of any Goods ordered by You; and
- (ii) cease to supply Goods to You.

**Examples of a default by You:** A default by You includes any one or more of the following, namely You:

- (iii) do not pay Us in accordance with clause 4. Payment;
- (iv) fail to take delivery of the Goods as ordered;
- (v) commit a breach of these Terms which remains unremedied after 10 days of Our request to remedy the breach.

**Our rights if there is a default by You:** Without limiting its rights under this clause, if You are in default We may take one or more of the following actions:

- (vi) (**future orders**) refuse to accept any future orders;
- (vii) (**current PO's**) cancel or suspend any unfilled PO's;
- (viii) (**termination**) terminate these Terms in which case all unfulfilled POs are cancelled.

**Termination by You:** You may terminate these Terms or a PO if We commit a breach of these Terms which remains unremedied after 20 business days of Your request for Us to remedy the breach.

**Termination by Us:** We may terminate these Terms or not accept Your PO if You commit a breach of these Terms which remains unremedied after 20 business days of Our request for You to remedy the breach.

**Cancelling and terminating:** On the cancellation and termination of these Terms and any PO:

- (xv) You must immediately return to Us or Our nominated representative any Goods which have been delivered but not paid for. You must also return any material, documentation, promotional materials or other information given by Us to You.

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## 17. EVENT BEYOND CONTROL

We will not be liable for any failure or delay in performing Our obligations under these Terms where such failure or delay results from any cause whatsoever beyond Our control, including an Act of God, war, terrorism, strike, riots, government intervention, pandemic, industrial stoppage or natural disaster or otherwise. If such an event occurs, We may, by written notice, cancel or suspend Your PO without incurring any liability to You.

## 18. ASSIGNMENT

A PO and any payments to be made in relation to it must not be assigned or transferred without Our prior written approval, which will not be unreasonably withheld or delayed.

## 19. CONFIDENTIALITY

**Use:** A party may be required to share confidential information about its business and in Your case, this may include confidential information about Your End User. In Our case, it may include product and pricing information. Any such information given by either party will be held by the other party in strict confidence and will not be disclosed to any third party and must only be used for the direct purpose to which the information was given, except to the extent required to be disclosed by law, regulatory authorities, or the requirements of any stock exchange, or with the written agreement of the other party.

**Definition:** Confidential information excludes information which is: (i) lawfully in the public domain before its disclosure or enters the public domain afterwards other than as a result of an unauthorised disclosure; (ii) becomes available to the receiving party from someone lawfully in possession of it who lawfully discloses it on a non-confidential basis; and (iii) is rightfully known by the receiving party before disclosure of it.

**Public announcements need consent:** No public announcement relating to a party's business or products is allowed without prior written consent of the other party, which will not be unreasonably withheld.

## 20. SEVERABILITY

If any term in these Terms is illegal or unenforceable, it is to be severed. The rest of the terms will not be affected.

## 21. NO WAIVER

No waiver of a right or remedy under these Terms will be effective unless it is in writing and signed by the other party. No delay or omission by a party to exercise any right will constitute a waiver of that right. Any waiver of a right will not constitute a waiver of any subsequent or continuing right.

## 22. RELATIONSHIP

These Terms do not create a relationship of exclusivity, employment, agency or partnership between the parties.

## 23. APPROVALS AND CONSENTS

Unless otherwise provided, either party may at its discretion give (conditionally or unconditionally) or withhold any approval or consent under these Terms.

## 24. GOVERNING LAW

These Terms are governed by the laws in force in New Zealand. Each party submits to the exclusive jurisdiction of the courts of New Zealand.

## 25. GOODS

**“Goods”** means those Goods supplied by the Company and includes but not limited to Barcode Printers, Barcode Scanners, Barcode Verifiers, Card Printers, Cash Drawers, Computer Memory, Consumables, Cyber Security Hardware, Cyber Security Software, EFTPOS Terminals, Ergonomics, Healthcare Products, Keyboards, Kiosk Terminals, Managed Services, Mobile Computing Terminals, POS Printers, POS Terminals, Scanner Scales, Security Products, Software Licences, Storage Devices, Surveillance Products and Touch Terminals. Any reference to “products” has the same meaning as Goods.

**“Authorised Goods”** means those Goods supplied by Us that require You to undertake specialised technical training, proof of staffing support capabilities and other specialised requirements as required by Us and Our vendors from time to time. Authorised Goods may be available to You on such requirements being met at Our discretion.