

Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality

## 1. DEFINITIONS

**Australian Consumer Law** means the law as set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth).

**Contract** means a contract for sale by Pivotel to the Customer of the Products and/or Services incorporating these Terms and Conditions.

**Consumer Contract** means a contract for the acquisition of Products or Services as a 'consumer' as that term is defined in section 3 of the Australian Consumer Law.

**Customer** means the person or legal entity identified in Pivotel's Invoice.

**Pivotel** means Pivotel Satellite Pty Limited ABN 81 099 917 398 of 26 Lawson Street, Southport QLD 4215.

**Place of Delivery** means the place designated by the Customer and agreed to by Pivotel for delivery of Products.

**Price** means the price advertised by Pivotel for the relevant Product or Service.

**Products** means the products as advertised by Pivotel for purchase.

**Services** means the different Service options offered by Pivotel for use with the Products, as described in Pivotel's Standard Form of Agreement.

**Standard Warranty** means the warranty protection that comes standard with Product purchases from Pivotel, as made available for download on the Pivotel website.

## 2. FORMATION OF CONTRACT

**2.1** No Contract comes into existence until the Customer's order has been accepted by Pivotel and such acceptance has been received by the Customer. The Contract is deemed to be concluded at the time and place where such acceptance is received by the Customer. The Customer warrants that it is buying for its own internal use only and not for re-sale purposes.

**2.2** The Products and/or Services sold are subject to these Terms and Conditions to the exclusion of any other terms and conditions stipulated or referred to by the Customer. The Customer acknowledges that it is aware of the contents of and agrees to be bound by these Terms and Conditions. Neither Pivotel's acknowledgement of a purchase order nor its failure to object to conflicting, different, or additional terms and conditions in a purchase order will be deemed an acceptance of such terms and conditions or a waiver of the provisions.

## 3. ORDERS, PRICE AND PAYMENT

**3.1** Unless credit terms have been expressly agreed by Pivotel, payment for the Products must be made in full before physical delivery of Products.

**3.2** Unless otherwise advised, shipping in Australia is free on orders over \$200. For destinations outside of Australia, the Customer will pay for all applicable shipping and handling charges.

**3.3** The Customer will bear all country, provincial, government, state and local sales, use, goods and services, value added, excise, privilege and similar levies/taxes.

**3.4** Time for payment is of the essence. Pivotel reserves the right to charge interest at the rate of 2% above the base commercial floating rate for National Australia Bank in Sydney.

## 4. SOFTWARE

**4.1** All software provided is subject to the terms and conditions of the license agreement relating to that software. The Customer acknowledges its obligations to abide by such license agreements. The Customer acknowledges that Pivotel does not make any express warranty in relation to any software under these Terms and Conditions of Sale. In addition to any rights the Customer may have under statute, all software is warranted in accordance with the license agreement that governs its use.

**4.2** All rights, title or interest in respect of the intellectual property rights in the software remain with Pivotel or the licensor of the software at all times.

## 5. TITLE AND RISK

Title to and risk in the Products passes to the Customer upon delivery of the Products to the Customer. Title to those products, which are software, shall remain with the applicable licensors at all times.

## 6. DELIVERY

**6.1** Pivotal will deliver the Products to the Place of Delivery.

**6.2** Shipments of Product are sent via Startrak. Product orders typically take between 1 to 2 business days to be despatched, and a further 1 to 3 business days to be delivered. A signature is required to accept delivery, which does not need to be the addressee.

**6.3** For the efficiency of Pivotal's production and fulfilment procedures, it may be necessary for Pivotal to deliver the Products by instalments in any sequence. Except as provided in clause 6.4, the Customer may not cancel the Contract where Products are delivered by instalments.

**6.4** Any dates provided by Pivotal for the delivery of the Products are estimates only and will not form part of the Contract. Actual delivery date will be affected by factors such as clearance of payment, Customer's location and availability of parts for the Products. For non Consumer Contracts, Pivotal will not be liable for any delay in delivery of the products and/or services, howsoever caused.

**6.5** Customer may cancel an order for Products purchased under a Consumer Contract if Pivotal is unable to deliver the Products within a reasonable period from the estimated delivery date.

**6.6** Pivotal has a policy of on-going Product update and revision. As a result, Pivotal may revise and/or discontinue Products at any time without notice.

## 7. ACCEPTANCE OF PRODUCTS

**7.1** Unless the Customer notifies Pivotal to the contrary on the day of delivery and such notification is confirmed in writing within two days, the Products will be deemed to have been accepted by the Customer. The Customer will not be entitled to withhold payment of all or any of the price of the Products whilst any claim is being investigated by Pivotal.

**7.2** Nothing in clause 7.1 affects a Customer's right to claim against Pivotal for a faulty product under Pivotal's Standard Warranty, or under their rights under statute.

## 8. WARRANTY

**8.1** Nothing in this clause 8 affects a Customer's rights under the Australian Consumer Law.

**8.2** Pivotal's Standard Warranty shall apply to all Customer orders.

## 9. SERVICE AND TECHNICAL SUPPORT

Pivotal will provide general service and technical support to the Customer in accordance with the then-current service and technical support policies in effect. Service and support offerings may vary from product to product.

## 10. LIABILITY

**10.1** Pivotal will not be liable in contract or in tort for any loss or damage suffered and the Customer's rights are limited to those set out in these Terms and Conditions and under statute.

**10.2** For goods and services which are not supplied under a Consumer Contract, Pivotal's total liability in respect of each event or series of connected events will not exceed the total price paid for the purchase of Products and/or Services under these Terms and Conditions.

**10.3** The Customer will indemnify Pivotal and keep Pivotal fully and effectively indemnified against any loss of or damage to any property or injury to or death of any persons caused by any negligent act or omission or wilful misconduct of the Customer, its employees, agents or sub-contractors or by any breach of its contractual obligations arising out of these Terms and Conditions.

**10.4** Pivotal and the Customer agree that Pivotal's liability: (a) for Products supplied under a Consumer Contract, is governed solely by the Australian Consumer Law; (b) for Products not supplied under a Consumer Contract does not extend to any incidental, indirect, special or consequential damages arising out of or in connection with the purchase, use or performance of products or services, even if Pivotal has been advised of their possibility.

**10.5** In the case of Products not supplied under a Consumer Contract, any service response times stated by Pivotal in the service contracts are approximate only and Pivotal will not be liable for any direct or indirect loss or damage arising from its failure to meet such response times.

**10.6** To the extent permitted by law, any typographical, clerical or other error or omission in sales literature, quotation, price list, acceptance of offer, invoice or other documents or information issued by Pivotal will be subject to correction without any liability on the part of Pivotal.

**10.7** In relation to goods or services supplied under a Consumer Contract that are not of a kind ordinarily acquired for personal, domestic or household use or consumption, Pivotal's liability for breach of a guarantee implied into a Contract which cannot lawfully be excluded is limited, at Pivotal's option, to: (a) in the case of Products, the replacement of the Products or the supply of equivalent Products; the repair of such Products; the payment of the cost of replacing the Products or of acquiring equivalent products; or the payment of the cost of having the Products repaired; OR (b) in the case of services, the supplying of services again; or the payment of the cost of having

## 11. USE OF PRODUCTS

**11.1** Pivotel Products are designed for specific applications and purposes to work under certain operating conditions. These are set out on the Pivotel website. Customer's use of the Product other than in accordance with any manual, operating instructions, specified operating conditions or any other information on the Pivotel website may damage the Product and data stored on it. Such use may adversely affect the Customer's rights.

**11.2** The Customer agrees to only use the Product in accordance with any manual and any specified operating conditions.

## 12. FORCE MAJEURE

Neither party will be liable for any delay in performing any of its obligations under these Terms and Conditions if such delay is caused by circumstances beyond the reasonable control of the party so delaying, and such party will be entitled to a reasonable extension of time for the performance of such obligations.

## 13. GOVERNING LAW

These Terms and Conditions are governed by and construed in accordance with the laws of New South Wales and are subject to the non-exclusive jurisdiction of the courts of New South Wales.

## 14. GENERAL

**14.1** The Customer must not assign or otherwise transfer any Contracts or any of its rights and obligations under these Terms and Conditions whether in whole or in part without the prior written consent of Pivotel. Any such unauthorised assignment will be deemed null and void.

**14.2** If any provision of these Terms and Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Terms and Conditions and the remainder of the provisions in question will not be affected.

**14.3** No failure or delay on Pivotel's part in exercising any power or right under these Terms and Conditions operates as a waiver, nor does any single or partial exercise of any power or right preclude any other or further exercise, or the exercise of any other power or right.