

Imagatec Conditions of Sale

1. Interpretation

- 1.1 "Seller" means Imagatec Pty Ltd ABN 72 072 451 711 its successors and assigns.
- 1.2 "Buyer" means the person or company contracting with the Seller for the purchase of Goods.
- 1.3 "Conditions" means these Conditions of Sale.
- 1.4 "Goods" means all Goods, merchandise and consumables supplied by the Seller pursuant to these Conditions.
- 1.5 "Services" means all labour performed on behalf of the Buyer by the Seller including but not limited to, installation of equipment software or cabling, labour in relation to the diagnosis, isolation or repair of faults with hardware not covered by warranty, labour for the correction of problems in software packages that are caused by malicious or unauthorised use of the software.

2. Creation of Contract Between Seller and Buyer

- 2.1 The Buyer may from time to time make requests to the Seller to provide a quotation for the supply of Goods or Services.
- 2.2 The quotation is an offer by the Seller to sell the Goods or Services specified in the quotation to the Buyer at the price and on any additional conditions set out in the quotation and on these Conditions.
- 2.3 The offer in the quotation remains open for acceptance for three (3) days.
- 2.4 If the Buyer wishes to accept the quotation it must notify the Seller in writing during that three (3) day period.

3. Price

- 3.1 All prices shown in the quotation are for one (1) unit only unless otherwise stated.
- 3.2 All prices shown in the quotation are inclusive of GST and GST will be charged where applicable at the current rate.
- 3.3 Pricing and descriptions may vary due to stock availability, Prices are valid for 3 days. On-site Installation if not specifically included in the quote will be charged separately at our standard labour and travel rates.

4. Packaging

- 4.1 Unless packaging requirements are otherwise agreed in writing the Seller will package the Goods in the original equipment manufacturer's packaging or in packaging of a higher standard.

5. Dispatch

- 5.1 Subject to Clause 5.5 the Seller will arrange for the dispatch of all Goods to the Buyer at the delivery point. The delivery point will be agreed by the parties and failing any agreement will be the Buyers address as specified in the request for a quotation.
- 5.2 The Seller will arrange delivery and will charge the Buyer for the cost of delivery (freight) to the delivery point for all consignments. The Seller will insure at its own cost all consignments of Goods forwarded by the Seller's carrier.
- 5.3 Subject to Conditions 5.4 and 5.5 the risk of all loss or damage to the Goods passes to the Buyer on delivery of the Goods to the delivery point. The signature of the Buyers representative on the consignment note acknowledging delivery of the Goods will be prima facie evidence of the delivery of the Goods to the delivery point.
- 5.4 If the Buyer requires the Seller to forward the Goods by a carrier other than the Seller's carrier, the Buyer will arrange and be liable for the freight and insurance for such arrangements, and risk will pass to the Buyer on delivery of the Goods by the Seller to the Buyer's carrier.
- 5.5 Notwithstanding the extent to which the Seller accepts risk for damage to the Goods the Buyer will be deemed to have accepted all damaged Goods unless -
- 5.6 Notification in writing stating a description of the nature of the damage and, if known, the cause of the damage, is received by the Seller of such damaged Goods within seven (7) days of delivery; and
- 5.7 The Goods are returned to the Seller at the address of the Seller appearing in the quotation within fourteen (14) days of delivery.
- 5.8 The responsibility for arranging and paying for return freight under Clause 5.5 rests with the Seller.
- 5.9 The Seller will not be liable for any loss or damage caused to the Buyer as a result of the Goods being damaged during a period of time that the Goods were at the Seller's risk. The Seller will at the Seller's option either replaces the damaged Goods within a reasonable time or refund the purchase price of the damaged Goods, including freight and insurance paid by the Buyer to the Seller, within fourteen (14) days of the return of the damaged Goods.

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6. Payment

6.1 The Seller will render to the Buyer an invoice with respect to each consignment of Goods.

6.2 Subject to the quotation, the Buyer must pay for all Goods on the following basis

1. By cash, electronic transfer or bank cheque prior to dispatch of the Goods by the Seller.
2. Where purchase is via a lease with a finance company, a deposit in an amount of \$2,000.00 or 10% of the quotation price (whichever is greater) is payable prior to the Seller commencing to produce the Goods. On delivery and full payment by the finance company, the deposit will be refunded.

6.3 Payment must be for the full amount. If any Goods are returned as damaged or defective, to the extent that the Seller bears the risk of damage or defective Goods under these Conditions, in which case payment must be in full for the undamaged or sound Goods unless the damaged Goods render the undamaged Goods unusable.

6.4 Subject to Clause 6.3, if the Buyer delays in payment in full the Buyer must pay interest on the overdue amount at the rate of 1.5% per month accruing daily from the date the amount fell due until payment in full is received.

6.5 The Seller's right to charge interest is without prejudice to any of the Seller's rights arising as a result of a breach of these Conditions.

7. Title

7.1 The Seller reserves the following rights in relation to the Goods until the full purchase price for the Goods is paid by the Buyer to the Seller –

7.2 Legal ownership of the Goods;

7.3 To enter the Buyer's premises (or the premises of any associated company or agent where the Goods are located) without liability for trespass or any resulting damage and retake possession of the Goods;

7.4 To keep or resell any Goods repossessed pursuant to (2) above.

7.5 If the Goods are resold or goods manufactured using the Goods are sold by the Buyer, the Buyer must hold such part of the proceeds of any such sale as represents the invoice price of the Goods sold or used in the manufacture of the Goods sold, in a separate identified account as the beneficial property of the Seller and will pay such amount to the Seller

on request. Notwithstanding these provisions the Seller is entitled to maintain an action against the Buyer for the purchase price of the Goods.

8. Force Majeure

8.1 The Seller will not be liable for any failure or delay to supply the Goods or Services in any substantial way due to any cause beyond its control such as, but not limited to any act or neglect of any carrier, subcontractor, manufacturer or supplier of the Seller, Act of God, strikes, lockouts, bans or other industrial disturbance, fire, flood, explosion, civil riot or commotion, government interference or request, by-laws, rules or regulations or orders of any competent authority.

8.2 In relation to Clause 8.1, should such failure or delay to provide the Goods or Services requested extend to a period longer than three calendar months -

1. The Buyer will be entitled to terminate the purchase agreement and the Seller's obligation to the Buyer will be terminated without liability to either party; and
2. Any monies paid by the Buyer to the Seller as either a pre-payment or deposit for the Goods, Services or delivery (freight), will be refunded in full by the Seller to the Buyer without either party having any further right of action against the other.

9. Default

9.1 Upon the happening of any of the following events:-

1. The commission by the Buyer of any act of bankruptcy or the Buyer going into liquidation or a petition being presented for the sequestration of the Buyer's estate or for the winding up of the Buyer; or
2. The Buyer assigning its property for the benefit of creditors or having a receiver, administrator or official manager appointed to any of its assets; or
3. The Buyer failing to make any payment to the Seller on the due date; or
4. The Buyer being in material and substantial breach of any of these Conditions.

9.2 Then in any such event the Seller will without prejudice to any other remedies have the right to-

1. Cease production of the Goods or provision of the Services; and / or
2. Decline to deliver the Goods or any balance of the Goods still due under these Conditions; and / or

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3. Stop any Goods in transit; and / or
4. Otherwise cease to perform any of its obligations to the Buyer; and / or
5. Terminate these Conditions without incurring any liability at law or in equity or without prejudice to its rights to recover amounts owing to it by the Buyer and / or damages; and / or
6. Enter into the premises and repossess any Goods already delivered but not yet paid for, in respect of which entry the Buyer will indemnify and keep indemnified the Seller for all reasonable damage incurred in recovering the Goods, and / or
7. Recover from the Buyer the contract price, together with default interest, of all Goods delivered and for freight, storage, handling and other reasonable expenses incurred by the Seller; and / or
8. The Goods elsewhere and charge the Buyer with any resultant loss.

10. Cancellation of Orders

10.1 Subject to Clause 8.2, where the Buyer cancels an order after written acceptance of a quotation the Seller may, at the Seller's discretion, agree to waive any rights it has under these Conditions upon the payment by the Buyer to the Seller of a cancellation fee of an amount equal to not more than 10% of the purchase price.

11. Liability of Seller under Legislation and Conditions

11.1 Subject to the provisions of Condition 11.3 the liability of the Seller for breach of any conditions or warranties, if any, implied by the Trade Practices Act (other than Section 69) and/or the Sale of Goods Act (as amended) and/or any other act or legislation relevant to the Goods shall be limited to one of the following at the Seller's option:-

1. the replacement of Goods or the supply of equivalent Goods; or
2. the repair of the Goods or;
3. the payment of the cost of replacing the Goods or acquiring equivalent Goods; or
4. the payment of the cost of having the Goods repaired.

11.2 The Buyer shall complete and return to the manufacturer any registration or warranty forms supplied with the goods as required by the manufacturer. Failure to

do so may limit or void the warranty services offered to the buyer by the manufacturer

11.3 To the full extent permitted by law:-

11.4 all warranties or liabilities imposed or implied in relation to the Goods whether by law or by statute are expressly negated.

11.5 the Buyer shall at the Buyer's cost and expense exhaust all remedies available from any manufacturer's warranty relevant to the Goods which is still valid prior to the Seller incurring any obligation under Condition 11.1.

12. Liability of Buyer

12.1 The Buyer will assume all risk and liability resulting from the use of the Goods either through-

1. Unauthorized service of the Goods; or
2. Unauthorized use of the Goods; or
3. Use of the Goods in conjunction with incompatible hardware or software.

13. General

13.1 These Conditions will be governed and construed in accordance with the laws of Queensland.

13.2 All notices to be served on the Buyer will be deemed to be duly served if left at or sent by ordinary prepaid post to the last known address of the Buyer. The Buyer will be deemed to have received any notice 3 days after posting.

13.3 Neither party may assign any rights or obligations under these Conditions without the prior written consent of the other party.

13.4 No waiver by the Seller of any default by the Buyer in the performance of any obligation or condition will be, or be deemed to be, a waiver of any other obligation or condition.

13.5 No variation of any provision of this agreement will be valid or enforceable unless such variation is in writing and is signed by the party or parties bearing the burden of that variation.

13.6 The Buyer acknowledges and accepts that all Goods are supplied by the Seller pursuant to these Conditions of Sale.

Support Terms and Conditions of Use

The Imagatec Support Service is defined by and its use of is subject to the following terms and conditions.

- 1) Imagatec will support all Hardware, Operating Systems and Applications provided by Imagatec to the client. This includes Windows and Imagatec Applications such as iPOS.
- 2) Imagatec is not responsible for or obliged to support Hardware or Software not supplied by Imagatec.
- 3) Imagatec reserves the right to alter the terms and conditions as required without notice.
- 4) Imagatec shall not engage in any activity, even if asked to by the client, which: -
 - a) Breaches Commercial Copyright;
 - b) Is unlawful and which may constitute criminal activity;
 - c) Is obscene or abusive.

Standard Service

- 1) Support Staff are available by Telephone 24hours a day 7days a week including Public Holidays.
- 2) Should Support Staff not be able to take your call immediately, it will be returned within 2 hours.
- 3) The Customer must maintain a Permanent Internet Connection with a Static IP address *

Licence Fee applicable per site/month (Direct Debit Only)

Additional Service Charges

Local Onsite Support (During Business Hours, inc Travel):

- \$AU 130.00** /hour (inc. GST) Standard Hourly Rate
- \$AU 400.00** /day (INC GST) Standard Half-Day Rate
- \$AU 750.00** /day (INC GST) Standard Day Rate
- \$AU 800.00** /day (INC GST) Lead Programmer Day Rate
- \$AU 950.00** /day (INC GST) Software Architect Day Rate

Local Onsite Support (After Business Hours):

\$AU 230.00 /hour (INC GST) includes travel to/from location

Remote POS Training (During Business Hours):

- \$AU 130.00** /hour (inc. GST) Standard Hourly Rate
- \$AU 400.00** /day (INC GST) Standard Half-Day Rate
- \$AU 750.00** /day (INC GST) Standard Day Rate

Optional Service (including travel)

- \$AU 750.00** /day (INC GST) Standard Day Rate
- \$AU 800.00** /day (INC GST) Lead Programmer Day Rate
- \$AU 950.00** /day (INC GST) Software Architect Day Rate

Fair Go Policy

Imagatec Support Staff are happy to take your call at any time day or night for issues which directly affect your customer

service. However if your support need is not urgent we would greatly appreciate if you could make contact during office hours or send a fax or an email.

Invoicing

Support is invoiced on the 1st of each month for that month. Payment is required no later than the 21st of each month. Imagatec reserves the right to refuse service if the account is overdue.

Imagatec may cancel a customer's support agreement if their account is overdue. Re-activating a customer's support agreement will incur an administration fee of \$350 in addition to any monies already owing and payment of the next month's support fees in advance.

Canceling Support

Imagatec Support is a subscription based service. The user must provide written or fax confirmation when closing or discontinuing the use of an account and must give a minimum of one calendar months' notice.

Re-establishment of Support Contract

A fee of \$380 is payable for customers wishing to re-establish a support contract.

Changing your preferred Support option

To change your support agreement, please notify Imagatec in writing or fax confirmation of the change before the 1st of the month. Changes the service will apply from the start of the next month.

Minimum Contract

The minimum Support Contract is for 1 month. Imagatec does not provide rebates for cancellation of contracts during a month.

Interaction with Imagatec Staff

Any vulgar language or harassment of any staff member of Imagatec via phone or email can result in immediate termination of account.

Contacting Imagatec

Complaints regarding the Imagatec Support service should be sent to help@imagatec.com.au

* Support costs do not include the cost of maintaining the Internet Connection. There are no restrictions on Internet Service Provider. Minimum connection speed 56K. The Internet Connection is to be attached to the iPOS server to allow for support to be provided by HTTP, FTP and VNC. Routers and Firewalls must be configured to let these ports through. The Internet Connection must have a static IP Address to allow for support to be completed.