

DATE: 4 April 2007

These Terms and Conditions with a quotation issued to a customer that refers to this document form the Agreement between the Axient Pty Limited as Supplier and the Customer identified on the quotation issued.

1. Definitions

1.1 In this Agreement, unless the contrary intention appears:

"Additional Charge" means a charge in accordance with the Supplier's standard rates in effect from time to time;

"Agreement" means this Agreement for the supply and installation of the Equipment and incorporates the quotation issued to the Customer;

"Customer's Normal Business Hours" means between 9am and 5pm on weekdays, except public holidays in the State of New South Wales;

"Delivery Date" means the date or period for the delivery of the Equipment as specified in the quotation issued to the Customer;

"Equipment" means the equipment, more particularly described in the quotation issued to the Customer, which is to be supplied by the Supplier to the Customer pursuant to this Agreement;

"Force Majeure" means a circumstance beyond the reasonable control of the Parties which results in a Party being unable to observe or perform on time an obligation under this Agreement. Such circumstances shall include but shall not be limited to:

- (a) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster;
- (b) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution; and
- (c) strikes;

"Installation Date" means the date (if any) specified in the quotation issued to the Customer for the installation of the Equipment;

"Intellectual Property Rights" means copyright, trade mark, design, patent, semiconductor or circuit layout rights;

"Licensed Software" means the software described in the quotation issued to the Customer consisting of a set of instructions or statements in machine readable medium and any enhancement, modification, update or new release of that software or part thereof that may be provided under the Software License Agreement;

"Operating Manuals" means the documentation, if any, relevant to instruction in the use of the Equipment and more particularly described in

the quotation issued to the Customer;

"Party" means either the Supplier or the Customer as the context dictates;

"Price" means the Price of the Equipment and the charge for any services provided by the Supplier pursuant to this Agreement, as specified in the quotation issued to the Customer;

"Restraint Period" means a period of 2 years commencing on the day on which the last party to complete an obligation under this Agreement has so completed it;

"Site" means the location for delivery and installation of the Equipment as specified in the quotation issued to the Customer;

"Software License Agreement" means the document between the Customer and the Supplier or the owner of the rights in the Licensed Software pursuant to which the Customer is granted a License to use the Licensed Software;

"Supplier's Normal Business Hours" means the normal hours during which the Supplier is open for business;

"Warranty Period" means 90 days from the day on which the Equipment is delivered to the Customer.

2. Interpretation

2.1 In this Agreement, unless the contrary intention appears:

- (a) the clause headings are for ease of reference only and shall not be relevant to interpretation;
- (b) a reference to a clause number is a reference to its subclauses;
- (c) words in the singular number include the plural and vice versa;
- (d) words importing a gender include any other gender;
- (e) a reference to a person includes bodies corporate and unincorporated associations and partnerships;
- (f) a reference to a clause is a reference to a clause or subclause of this Agreement;
- (g) a reference to a subclause is a reference to a subclause of the clause in which that reference is made;
- (h) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (i) a reference to the quotation issued to the Customer includes a reference to any part of that quotation which is incorporated by reference;
- (j) the recitals to this Agreement do not form part of the Agreement;
- (k) monetary references are references to Australian currency.

3. Equipment specifications

- 3.1 The Supplier may substitute any component of the Equipment or part of any component of the Equipment prior to delivery without consultation with the Customer and may in any other respect modify the Equipment if, in the reasonable opinion of the Supplier, the said substitution or modification:
- (a) will not adversely affect the performance or capacity of the Equipment;
 - (b) will not alter the configuration of the Equipment in any material respect; and
 - (c) will not otherwise materially affect the obligations of the Supplier or prejudice the rights of the Customer under this Agreement.
- 3.2 If a substitution or modification is made under subclause 1, the Supplier shall notify the Customer on or prior to delivery.

4. Operating manuals

- 4.1 The Supplier shall provide the Customer with such number of copies of each of the Operating Manuals, if any, as are specified in the quotation issued to the Customer.

5. Site preparation

- 5.1 The Customer shall at its own expense prepare the Site, and access to the Site, prior to delivery. In so doing, the Customer shall comply with any directions or specifications issued by the Supplier.
- 5.2 Without limiting the foregoing, the Customer shall ensure the supply at the Site of:
- (a) adequate electric current;
 - (b) adequate electrical and mechanical fittings; and
 - (c) appropriate environmental conditions.
- 5.3 The Supplier shall, upon request from the Customer, supply such information and assistance as the Supplier considers reasonable and necessary to enable the Customer to prepare the Site.
- 5.4 Notwithstanding the foregoing, the Supplier shall, if requested by the Customer and at the Customer's expense, inspect the Site prior to delivery for the purpose of providing an opinion as to whether the Site is suitable for delivery and installation of the Equipment. The Customer shall ensure the Supplier is granted all reasonable access, including necessary security clearances, for the purposes of inspecting the Site as provided in this subclause.
- 5.5 If the Supplier delays delivery or installation of the Equipment due to inadequate preparation of the Site or access to the Site, the Customer shall be liable to the Supplier for all reasonable costs and expenses incurred by the Supplier directly or indirectly as a result of such delay.

6. Delivery of Equipment

- 6.1 The Supplier will use reasonable endeavours to deliver the Equipment to the Customer on the Delivery Date at the Site during the Customer's Normal Business Hours.
- 6.2 If the Customer wishes the Equipment to be delivered to a location other than the Site, it shall make a request in writing to the Supplier not later than thirty (30) days (or such other period as is agreed between the Parties) prior to the Delivery Date. The Supplier may at its sole discretion determine whether to agree to such a request and what conditions, if any, shall apply in the event of it agreeing to such a request.
- 6.3 If the Customer requests delivery of the Equipment to be made in advance of the Delivery Date or postponed beyond the Delivery Date, the Supplier shall use its reasonable endeavours to re-schedule delivery accordingly but shall otherwise be under no obligation to comply with the Customer's request.
- 6.4 In the event the Supplier exceeds to a request made by the Customer pursuant to subclauses 2 or 3, the Supplier may make such Additional Charge as it reasonably considers to be appropriate to reflect the direct impact upon the Supplier's resources of complying with such request.
- 6.5 If the Supplier requests permission to deliver the Equipment prior to the Delivery Date, the Customer shall use its best endeavours to prepare the Site and to do all other things necessary to enable it to comply with the request and to accept early delivery.

7. Installation of Equipment

- 7.1 The Supplier shall use its reasonable endeavours to install the Equipment at the Site on the Installation Date. In the absence of agreement to the contrary, the installation shall be effected during the Supplier's Normal Business Hours.
- 7.2 If the Customer wishes the Equipment to be installed at a location other than the Site, it shall make a request in writing to the Supplier to that effect not later than thirty (30) days (or such other period as is agreed between the Parties) prior to the Installation Date. The Supplier may at its sole discretion determine whether to agree to such a request and what conditions, if any, shall apply in the event of it agreeing to such a request.
- 7.3 If the Customer requests installation in advance of the Installation Date, the Supplier shall use its reasonable endeavours to re-schedule installation accordingly but shall be under no obligation to comply with the Customer's request.
- 7.4 If the Supplier accedes to a request made by the Customer pursuant to subclauses 2 or 3, it may make such Additional Charge it reasonably considers to be appropriate to reflect the direct impact upon the Supplier's resources of complying with such request.
- 7.5 The Customer shall provide the Supplier with such assistance, including the provision of personnel and facilities, as the Supplier reasonably

considers necessary to ensure satisfactory installation of the Equipment. The Customer shall ensure the Supplier is granted all reasonable access, including necessary security clearances, for the purposes of complying with this subclause.

- 7.6 If the Supplier requests permission to install the Equipment prior to the Installation Date, the Customer shall use its best endeavours to prepare the Site and do all other things necessary to comply with the request and to accommodate early installation.

8. Delivery and Installation of Licensed Software

- 8.1 The Supplier shall deliver the Licensed Software to the Customer, and install the Licensed Software, in accordance with the Delivery Date specified in the quotation issued to the Customer.
- 8.2 The Customer shall give the Supplier such reasonable assistance, including the provision of personnel and facilities, as the Supplier reasonably considers necessary to ensure satisfactory installation of the Licensed Software. The Customer shall ensure the Supplier is granted all reasonable access, including necessary security clearances, for the purposes of complying with subclause 1.
- 8.3 If, in the opinion of the Supplier, the costs associated with the installation of the Licensed Software are greater than the Supplier could have reasonably contemplated on the Supplier's quotation issued to the Customer and are greater than the costs which would normally be associated with a similar installation project, the Supplier may make an Additional Charge.

9. Training

- 9.1 The Price does not include a training fee unless otherwise specified on the quotation issued to the Customer.
- 9.2 The Supplier will provide training in the use of the Equipment and/or Licensed Software, if requested by the Customer, subject to payment of an Additional Charge.

10. Price

- 10.1 The Customer shall pay the Price to the Supplier in the manner specified in the quotation issued to the Customer.
- 10.2 If the Customer disputes the whole or any portion of the amount claimed in an invoice submitted by the Supplier, the Customer shall nonetheless pay the full amount stated in the invoice but shall notify the Supplier in writing (within seven days of receipt of the invoice, time being of the essence) of the reasons for disputing the invoice. If it is resolved that some or all of the amount in dispute ought not properly to have been paid at the time it was invoiced, then the Supplier shall refund the amount finally resolved without interest.
- 10.3 In the event that:

- (a) the delivery or installation of the Equipment and/or Licensed Software is delayed;
- (b) the Supplier is required to deliver or install the Equipment and/or Licensed Software in circumstances other than those expressly or reasonably assumed or contemplated in a transaction of this nature; or
- (c) there is a change in the timing or complexity of delivery or installation;

for reasons other than a breach of this Agreement by the Supplier, then the Supplier shall be entitled to payment of an Additional Charge on a time and materials basis in respect of additional resources reasonably utilised in order to fulfil its obligations under this Agreement.

- 10.4 The Price is exclusive of taxes, duties and charges imposed or levied in Australia or overseas in connection with the supply of the Equipment and/or Licensed Software. Without limiting the foregoing, the Customer shall be liable for any new taxes, duties or charges imposed subsequent to the date of this Agreement in respect of the Equipment and/or Licensed Software.

11. Title

- 11.1 Subject to any other express provision of this Agreement to the contrary, title in the Equipment and/or Licensed Software will pass to the Customer only upon full payment of the Price, any Additional Charges and any interest due under this Agreement.

12. License Conditions

- 12.1 The Customer may only use the Licensed Software in accordance with the Software License Agreement pursuant to which the use of the Licensed Software is governed.

13. Risk

- 13.1 Risk of loss or damage to the Equipment passes to the Customer upon delivery of the Equipment to the Site.
- 13.2 Between the delivery of the Equipment to the Site and the passing of title pursuant to this Agreement, the Customer shall insure the Equipment with a reputable insurance company in favour of the Supplier in an amount equal to its replacement cost against all risks of loss or damage due to any cause.

14. Employees and contractors

- 14.1 During the Restraint Period, the Customer shall not solicit for employment, contract or for the provision of services, either directly or indirectly, any person who is employed or contracted by the Supplier.
- 14.2 The Customer shall promptly advise the Supplier if a person who is

employed or contracted by the Supplier seeks to be employed or contracted by the Customer prior to the expiration of the Restraint Period.

15. Intellectual property rights

- 15.1 Subject to subclauses 2, 3 and 4, the Supplier shall indemnify the Customer against liability under any final judgment in proceedings brought by a third party against the Customer which determine that the Customer's proper use of the Equipment and/or Licensed Software according to the Supplier's written directions constitutes an infringement in Australia of any Intellectual Property Rights in the Equipment and/or Licensed Software.
- 15.2 The Supplier shall not be required to indemnify the Customer as provided in subclause 1 unless the Customer:
- (a) notifies the Supplier in writing as soon as practicable of any infringement, suspected infringement or alleged infringement;
 - (b) gives the Supplier the option to conduct the defence of such a claim, including negotiations for settlement or compromise prior to the institution of legal proceedings;
 - (c) provides the Supplier with reasonable assistance in conducting the defence of such a claim;
 - (d) permits the Supplier to modify, alter or substitute the infringing part of the Equipment and/or Licensed Software at its own expense in order to avoid continuing infringement, or authorises the Supplier to procure for the Customer the authority to continue the use and possession of the infringing Equipment and/or Licensed Software.
- 15.3 The Supplier shall not indemnify the Customer to the extent that an infringement, suspected infringement or alleged infringement arises from:
- (a) use of the Equipment and/or Licensed Software in combination by any means and in any form with other goods not specifically approved by the Supplier;
 - (b) use of the Equipment and/or Licensed Software in a manner or for a purpose not reasonably contemplated or not authorised by the Supplier;
 - (c) modification or alteration of the Equipment and/or Licensed Software without the prior written consent of the Supplier; or
 - (d) any transaction entered into by the Customer relating to the Equipment and/or Licensed Software without the Supplier's prior consent in writing.
- 15.4 In the event that proceedings are brought or threatened by a third party against the Customer alleging that the Customer's use of the Equipment and/or Licensed Software constitutes an infringement of Intellectual Property Rights, the Supplier may at its option and at its own expense conduct the defence of such proceedings. The Customer shall provide all necessary co-operation, information and assistance to the Supplier in the

conduct of the defence of such proceedings.

- 15.5 The Customer shall indemnify the Supplier against any loss, costs, expenses, demands or liability, whether direct or indirect, arising out of a claim by a third party alleging such infringement if:
- (a) the claim arises from an event specified in subclause 3; or
 - (b) the ability of the Supplier to defend the claim has been prejudiced by the failure of the Customer to comply with any requirements of subclauses 2 or 4.

16. Warranties

- 16.1 The Supplier warrants that the Equipment is newly manufactured, unless otherwise stated in the quotation issued to the Customer.
- 16.2 The Customer may during the Warranty Period notify the Supplier in writing of any defect or suspected defect in the Equipment. The Supplier shall, to the extent necessary, inspect, replace or repair the Equipment at no Additional Charge and as soon as practicable after receiving notice from the Customer pursuant to this subclause.
- 16.3 The Supplier shall not be liable under subclause 2 if the defect is the result of:
- (a) improper use or mismanagement by the Customer;
 - (b) operation of the Equipment other than in accordance with the Operating Manual;
 - (c) use of the Equipment in a manner not reasonably contemplated by the Supplier;
 - (d) modification of the Equipment not authorised by the Supplier;
 - (e) use of the Equipment in a manner contrary to law;
 - (f) subjection of the Equipment to unusual or in a physical, environment or electrical stress not recommended by the Supplier;
 - (g) reinstallation or moving of the Equipment by a person other than the Supplier;
 - (h) use of the Equipment by a person other than the Customer;
 - (i) the Customer's failure to comply with any terms of this Agreement;
 - (j) the Customer's failure or refusal to install engineering changes or enhancements recommended by the Supplier; or
 - (k) the serial number being removed or defaced.
- 16.5 The Supplier shall have no obligation under this clause in respect of Equipment designated in the quotation issued to the Customer as being excluded from warranty coverage.
- 16.6 Title in any replaced Equipment will vest in or remain with the Supplier.

- 16.7 If the Customer provides notice of a defect or suspected defect pursuant to subclause 3 and any subsequent inspection by the Supplier reveals no further obligation on the Supplier under subclause 3, the direct and indirect costs and expenses associated with such inspection shall be borne by the Customer.

17. Implied terms

- 17.1 Subject to subclause 2, any condition or warranty which would otherwise be implied in this Agreement is hereby excluded.
- 17.2 Where legislation implies in this Agreement any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such condition or warranty, the condition or warranty shall be deemed to be included in this Agreement. However, the liability of the Supplier for any breach of such condition or warranty shall be limited, at the option of the Supplier, to one or more of the following:
- (a) if the breach relates to goods:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of such goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the goods repaired; and
 - (b) if the breach relates to services:
 - (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.

18. Liability of supplier

- 18.1 Except in relation to liability for personal injury (including sickness and death), the Supplier shall be under no liability to the Customer in respect of any loss or damage (including consequential loss or damage) which may be suffered or incurred or which may arise directly or indirectly in respect of goods or services supplied pursuant to this Agreement or in respect of a failure or omission on the part of the Supplier to comply with its obligations under this Agreement.
- 18.2 Subject to subclause 3, the Customer warrants that it has not relied on any representation made by the Supplier which has not been stated expressly in this Agreement, or upon any descriptions, illustrations or specifications contained in any document including catalogues or publicity material produced by the Supplier.
- 16.3 The Customer acknowledges that to the extent the Supplier has made any representation which is not otherwise expressly stated in this

Agreement, the Customer has been provided with an opportunity to independently verify the accuracy of that representation.

- 18.4 The Customer shall at all times indemnify and hold harmless the Supplier and its officers, employees and agents ("those indemnified") from and against any loss (including reasonable legal costs and expenses) or liability reasonably incurred or suffered by any of those indemnified arising from any proceedings against those indemnified where such loss or liability was caused by:
- (a) a breach by the Customer of its obligations under this Agreement;
or
 - (b) any wilful, unlawful or negligent act or omission of the Customer.

19. Termination

- 19.1 Without limiting the generality of any other clause in this Agreement, the Supplier may terminate this Agreement immediately by notice in writing if:
- (a) the Customer is in breach of any term of this Agreement and such breach is not remedied within thirty (30) days of written notice by the Supplier;
 - (b) the Customer becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration;
 - (c) the Customer, being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving;
 - (d) the Customer, being a natural person, dies; or
 - (e) the Customer ceases or threatens to cease conducting its business in the normal manner.
- 19.2 If notice is given to the Customer pursuant to subclause 1, the Supplier may, in addition to terminating the Agreement:
- (a) repossess the Equipment if payment of the Price and Additional Charges has not been made in full;
 - (b) retain any moneys paid;
 - (c) charge a reasonable sum for work performed in respect of which work no sum has been previously charged;
 - (d) be regarded as discharged from any further obligations under this Agreement; and
 - (e) pursue any additional or alternative remedies provided by law.

20. Force majeure

- 20.1 Neither Party shall be liable for any delay or failure to perform its obligations pursuant to this Agreement if such delay is due to Force Majeure.

- 20.2 If a delay or failure of a Party to perform its obligations is caused or anticipated due to Force Majeure, the performance of that Party's obligations will be suspended.
- 20.3 If a delay or failure by a Party to perform its obligations due to Force Majeure exceeds sixty (60) days, either Party may immediately terminate the Agreement on providing notice in writing to the other Party.
- 20.4 If this Agreement is terminated pursuant to subclause 3, the Supplier shall refund moneys previously paid by the Customer pursuant to this Agreement for goods or services not provided by the Supplier to the Customer.

21. Sub-contracts

- 21.1 The Supplier may sub-contract for the performance of this Agreement or any part of this Agreement in its absolute discretion.

22. Entire agreement

- 22.1 This Agreement constitutes the entire agreement between the Parties in respect of the Equipment and supersedes all prior representations, agreements, statements and understandings, whether verbal or in writing.

23. Precedence

- 23.1 The documents comprising this Agreement shall be read in the following order of precedence:
- (a) The details of the quotation issued to the Customer;
 - (b) The Software License Agreement;
 - (c) The clauses of this Agreement.
- 23.2 Where any conflict occurs between the provisions contained in two or more of the documents forming this Agreement, the document lower in the order of precedence shall where possible be read down to resolve such conflict. If the conflict remains incapable of resolution by reading down, the conflicting provisions shall be severed from the document lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions of that document.

24. Assignment and novation

- 24.1 The benefit of this Agreement shall not be assigned by the Customer without the Supplier's written consent.
- 24.2 The Supplier may consent to the assignment or novation of this Agreement by the Customer subject to such conditions as it chooses to impose.

25. Waiver

- 25.1 No right under this Agreement shall be deemed to be waived except by notice in writing signed by each party.
- 25.2 A waiver by the Supplier pursuant by subclause 1 will not prejudice its rights in respect of any subsequent breach of the Agreement by the Customer.
- 25.3 Subject to subclause 1, any failure by the Supplier to enforce any clause of this Agreement, or any forbearance, delay or indulgence granted by the Supplier to the Customer, will not be construed as a waiver of the Supplier's rights under this Agreement.

26. Variation

- 26.1 The provisions of this Agreement, shall not be varied, except by agreement in writing signed by the Parties.
- 26.2 If either Party wishes to vary the Agreement, the proposing Party shall submit a copy of the proposed variations to the other Party ("the receiving Party"), specifying a reasonable period in which the receiving Party is to provide written notice of acceptance or rejections of the proposal.
- 26.3 If the receiving Party accepts the variations, the Agreement shall be deemed to be so amended from the date of acceptance.
- 26.4 If the receiving Party rejects the proposed variations, each Party shall perform the Agreement in accordance with the unvaried terms.

27. Supplier's rights

- 27.1 Any express statement of a right of the Supplier under this Agreement is without prejudice to any other right of the Supplier expressly stated in this Agreement or existing at law.

28. Survival of agreement

- 28.1 Subject to any provision to the contrary, this Agreement shall enure to the benefit of and be binding upon the Parties and their successors, trustees, permitted assigns or receivers but shall not enure to the benefit of any other persons.
- 28.2 The covenants, conditions and provisions of this Agreement which are capable of having effect after the expiration of the Agreement shall remain in full force and effect following the expiration of the Agreement.

29. Severability

- 29.1 If any provision of this Agreement is held invalid, unenforceable or illegal for any reason, the Agreement shall remain otherwise in full force apart from such provisions which shall be deemed deleted.

30. Governing law

30.1 This Agreement will be governed by and construed according to the law of the jurisdiction of the State of New South Wales and the Parties submit to the jurisdiction of the Courts of that State.

31. Notices

31.1 Notices under this agreement may be delivered by hand, by mail or by facsimile to the addresses for each party specified in the quotation issued to the Customer, or such other address as is notified in writing by one party to the other.

31.2 Notice will be deemed given:

- (a) in the case of hand delivery, upon written acknowledgment of receipt by an officer or other duly authorised employee, agent or representative of the receiving Party;
- (b) in the case of posting, three days after despatch;
- (c) in the case of facsimile, upon receipt of transmission if received on a business day or otherwise at the commencement of the first business day following transmission.