

# TERMS AND CONDITIONS OF SALE



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In these Conditions “**ZCG Scalar**” means ZCG Scalar or any related corporation. The “**Buyer**” means the person, firm corporation or governmental or semi governmental authority purchasing goods and/or services from ZCG Scalar. Unless otherwise clearly stated in writing by ZCG Scalar the following conditions for wholesale sales will apply. “**Goods**” means the goods being purchased from ZCG Scalar, or any part thereof. “**Services**” means services being purchased from ZCG Scalar, or any part thereof.

## 1) CONTRACT

- a) The matters referred to on the face of this document and these conditions constitute a Contract (“**this Contract**”) between ZCG Scalar and the Buyer. These Conditions shall prevail over any forms of the Buyer that contain provisions contrary to or inconsistent with these conditions and any such forms shall not apply to this Contract nor shall they be deemed to constitute a counter offer by the Buyer.
- b) These terms and conditions shall apply to the exclusion of all agreements, representations and other statements made prior to entering into this agreement and shall constitute all the terms and conditions which govern this agreement.

## 2) MINIMUM ORDER

ZCG Scalar reserves the right not to accept any purchase order from the Buyer for goods and/or services which **totals less than \$50.00**, excluding GST and Freight.

## 3) DELIVERY

Unless ZCG Scalar otherwise agrees in writing, GST, delivery, carriage, insurance, handling, storage and packaging and any other expense relating to the goods and/or services shall be charged to and paid by the Buyer.

- a) In the absence of specific instruction from the Buyer, ZCG Scalar will select the carrier and make such contract with the carrier on behalf of the Buyer as ZCG Scalar in its absolute discretion considers reasonable.
- b) In the absence of specific instructions from the Buyer, ZCG Scalar will insure all outgoing freight. If the Buyer instructs that their freight is not to be insured, then ZCG Scalar will not accept any responsibility for goods lost or damaged during transit. When insured goods arrive at their destination, before signing the Delivery Docket, it is the Buyer's responsibility to first check that all items are present and in good condition. If anything is found to have been damaged in transit, or is missing, the Buyer must ensure that appropriate notes are made on the Delivery Docket prior to signing. ZCG Scalar will not take any responsibility for products signed for as being received in good order and condition, but later found to be damaged or missing.
- c) ZCG Scalar will endeavour to deliver the goods and/or services within any delivery period required by the Buyer but subject to Condition 26 shall not in any event be liable for any loss or damage directly or indirectly resulting from any failure to deliver within such period. Time shall not be the essence of this Contract and any delay shall not constitute grounds for cancellation of this contract by the Buyer.
- d) ZCG Scalar shall not be liable for any loss or damage resulting from any failure to give notice of any delay in delivery.
- e) ZCG Scalar reserves the right to deliver the goods and/or services by instalments at its absolute discretion and in such circumstances the Buyer shall accept delivery of such goods and/or services by instalments.
- f) ZCG Scalar shall retain the full legal and beneficial ownership and title in and to goods and/or services delivered to the Buyer unless and until the Buyer has paid to ZCG Scalar or as it directs the invoiced price of those goods and/or services but risk in any such goods and/or services shall pass to the Buyer when ZCG Scalar appropriates the goods and/or services to the Buyer's order. Such goods and/or services shall thereafter be at the risk and expense of the Buyer. If the Buyer defaults or otherwise fails to pay such amount as ZCG Scalar may (but without limiting any other rights or remedies available to ZCG Scalar at law, in equity or by statute) seize, repossess and/or sell the goods and/or services and for such purpose ZCG Scalar or its representatives may enter any premises in or upon which ZCG Scalar believes from time to time the goods and/or services to be located.
- g) If the Buyer sells, transfers or otherwise disposes of the goods and/or services to any personnel or corporation whatsoever (“the Third Party”) and the Buyer has not paid to ZCG Scalar or as it directs the invoiced price of those goods and/or services the Buyer holds as trustee to the extent of the unpaid invoiced price of the goods and/or services the proceeds of sale for ZCG Scalar and shall pay such proceeds to ZCG Scalar in full as soon as is reasonably practicable after receipt by the Buyer and, where the proceeds of sale are less than the amount owing by the Buyer to ZCG Scalar, such proceeds shall be applied in partial satisfaction to be the invoiced price or amount then outstanding.
- h) ZCG Scalar shall have the right to enter the Buyer's premises or any premises upon which the Buyer stores the goods or some of the goods are stored and to take the goods from the Buyer until the goods have been paid for. If ZCG Scalar is unable to resell the goods at the same price or more than the Buyer has paid ZCG Scalar, then ZCG Scalar shall be entitled to make claim, demand or institute, if necessary, an action in order to recover any loss or damage sustained by ZCG Scalar due to ZCG Scalar not being able to obtain the same price as was receivable from the Buyer for the goods.

## 4) USE OF GOODS

- a) The Buyer agrees, for so long as it is required by ZCG Scalar so to do, that it will notify ZCG Scalar in writing prior to accepting the supply of any radio communications transmitter or receiver included in a class specified in regulations made under the Radio communications Act 1983 or any corresponding legislation if the particular radio communications transmitter or receiver is one that it intends to operate, or is one in respect of which it must otherwise comply with any law requiring the production to ZCG Scalar of a licence permitting the Buyer to operate or, possess the same. The Buyer warrants that any radio communications transmitter or receiver included in a class specified as aforesaid the supply of which it has accepted without giving the notice to ZCG Scalar required by this Condition is not one that it will operate.

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- b) Pursuant to the provisions of Section 115 of the **Telecommunications Act 1989** (Commonwealth) (the said Act), ZCG Scalar does not warrant to the Buyer that the goods and/or services sold comply with Section 114(1) of the said Act or any amendments that are made to the said Act with regard to the equipment being used in connection with a telecommunications network, nor does ZCG Scalar warrant that there is any permit in force for connection of the equipment to a telecommunications network. Any such connections by the Buyer are done without the knowledge or consent of ZCG Scalar and expressly without any warranty by ZCG Scalar and if done, is done solely by the Buyer, at the Buyer's responsibility and risk with the onus upon the Buyer to obtain all necessary permits and meet the requirements of the Said Act.

## 5) DESIGN CHANGES

ZCG Scalar reserve the right to alter the design or specifications of any goods and/or services at any time without notice. ZCG Scalar shall have no obligation to make alterations in the design or construction of goods and/or services previously accepted and delivered even though design changes are incorporated in goods and/or services subsequently being delivered.

## 6) BUYER'S SPECIAL REQUIREMENTS

Changes to the specifications at the Buyer's request after the placing of any order will only be accepted at ZCG Scalar's discretion. Such changes will only take effect when agreed in writing by the Company and may result in late delivery or increase in price.

## 7) CONSENTS

It shall be the responsibility of the Buyer to obtain any consent necessary for the importation of goods and/or services into their country. Any contract shall be conditional upon ZCG Scalar obtaining any consent necessary for the export of the goods and/or services from Australia and/or from the country of origin.

## 8) PAYMENTS

**All accounts are payable net cash within thirty (30) days from date of Invoice.**

- a) Where payment is not received in accordance within the specified time, the Buyer agrees that ZCG Scalar shall have the right to invoice and the Buyer will pay Late Payment Charges amounting to 2.5 per centum per month on all monies from time to time owing in respect of the goods and/or services including all charges.
- b) ZCG Scalar reserves the right to suspend all and any deliveries to the Buyer where payment is not received in accordance with paragraph (a) of the Clause.
- c) ZCG Scalar reserves the right to withdraw at any time credit facilities extended the Buyer where payment is not received in accordance with paragraph (a) of this Clause or where others acts or omissions of the Buyer are objectionable to ZCG Scalar.
- d) No discount will be allowed except where otherwise agreed in writing by ZCG Scalar.
- e) The Buyer authorises ZCG Scalar (its servants or agents) to make all reasonable enquires to verify the information given to ZCG Scalar by the Buyer is correct and that the Buyer can satisfy the requirements of ZCG Scalar and its commitments under the terms of this agreement.

## 9) PRICE VARIATION

- a) Subject to paragraph (b) of this clause all prices shall be as quoted in writing or in accordance with ZCG Scalars current price list. Verbal quotations are subject to written confirmation.
- b) ZCG Scalar reserves the right without notice to alter the price of goods and/or services whether or not a deposit or part payment has been received by ZCG Scalar for such goods and/or services and to invoice the Buyer for any such extra amount where the cost of the goods and/or services to ZCG Scalar has altered due to circumstances beyond its control, or to correct errors or omissions.

## 10) RETURN OF GOODS

- a) No return of goods will be accepted for credit unless :
  - i) A written "**Customer Return Authorisation Form**" has been issued to the Buyer by ZCG Scalar explaining the reason(s) why goods are being returned.
  - ii) The Buyer returns the goods to ZCG Scalar together with the "Customer Return Authorisation Form" within thirty (30) days from the date the form was issued, and
  - iii) The freight charge for the return of goods to ZCG Scalar is paid by the Buyer, unless stated otherwise by ZCG Scalar on the "Customer Return Authorisation Form".
- b) No return of goods will be accepted and no credit note will be issued for any goods specially acquired or specially manufactured for the Buyer.
- c) No credit note will be issued to refund the original freight charge to the Buyer, unless stated otherwise by ZCG Scalar on the "Customer Return Authorisation Form".
- d) When goods are returned by the Buyer, a minimum Re-Stocking Fee of \$50.00 will be payable by the Buyer, or 15 percent of the Invoiced value of the goods returned to ZCG Scalar, whichever amount is the greater, unless stated otherwise by ZCG Scalar on the "Customer Return Authorisation Form".

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- e) Where in ZCG Scalar's opinion goods are returned otherwise than in the same condition as when they were delivered to the carrier or directly to the Buyer a charge equal to the cost necessary to restore the goods to their original condition shall be levied and be payable by the Buyer on demand.
- f) Where goods are returned to ZCG Scalar and ZCG Scalar are unable to resell the goods to a third party or unable to resell the goods to the third party for the same amount as was sold to the Buyer then ZCG Scalar shall be entitled to charge the Buyer an equal amount to the loss that it has incurred by reason of the Buyer returning the goods to ZCG Scalar.

## 11) CANCELLATION

To the full extent permitted by law, orders for goods and/or services specially acquired by ZCG Scalar for the Buyer shall not be cancelled by the Buyer without ZCG Scalar's written consent. The cancellation of any order shall be made on terms which indemnify ZCG Scalar against all loss.

## 12) STANDARD SPECIFICATIONS AND FINISH

Goods and/or services ordered by reference to a standard specification shall be an order for goods and/or services of that general description being identified thereby, made to the current standard finish available.

## 13) INTELLECTUAL PROPERTY PROTECTION

ZCG Scalar does not warrant that the goods and/or services supplied do not infringe any Letters Patent, Registered Design, Copyright or any Trademarks and shall not indemnify the Buyer, its customers or any user of the goods and/or services against any action, suit, proceedings, demand or claim for actual or alleged infringement of any Letters Patent, Registered Design, Copyright or Trademarks brought or made against the Buyer, its customers or any users by reason of the use of the goods and/or services supplied.

## 14) GOVERNING LAWS

The Buyer has the full responsibility of ensuring that he complies with all Acts, Regulations, Ordinances and By-Laws affecting the possession and use of goods and/or services sold including but without limiting the generality of the foregoing any Acts, Regulations, Ordinances and By-Laws regulating transmitting and receiving equipment or connection to a telecommunications network.

## 15) PRODUCT WARRANTY

ZCG Scalar warrants that all goods sold to the Buyer will be free of defects in materials and workmanship attributable to ZCG Scalar for a period of :

- a) **2 YEARS** from the date of Invoice for Broadcast Antennas and Power Dividers; and
- b) **1 YEAR** from the date of Invoice for all other Antennas and Accessories.

Should the Buyer find any goods to be defective in materials or workmanship attributable to ZCG Scalar within the stated warranty period, then the Buyer must complete a "**Warranty Claim Form**" explaining the defect(s) and submit this form to ZCG Scalar.

Upon receiving a "Warranty Claim Form" from the Buyer, then ZCG Scalar will either :

- a) Issue the Buyer with a "**Customer Return Authorisation Form**" in accordance with Paragraph (9) to authorise the return of goods to ZCG Scalar for examination, with the freight for items returned under warranty to ZCG Scalar arranged and paid by the Buyer; or
- b) Attend the Buyer's installation site to assess any defect(s) in the goods supplied.

ZCG Scalar at their discretion will either repair, replace or refund the cost of any goods found to be defective within the stated warranty period, provided that the goods have not been :

- a) damaged through improper installation, physical abuse, neglect or accident,
- b) assembled incorrectly,
- c) serviced by an unauthorised person, or
- d) used for other than their intended purpose.

Components are only covered by the component manufacturer's normal warranty and should such warranty have expired before the return of the goods then new components installed will be charged at cost. Goods repaired under warranty will be returned to the Buyer or ultimate user, carriage paid.

ZCG Scalar accept no responsibility for any costs incurred for removing or re-installing the product or any losses involved while the product is out of service.

The benefits conferred by the Warranty contained in this condition are in addition to all other rights and remedies in respect of the goods which the Buyer has under the Trade Practices Act and similar State and Territory laws.

## 16) REPAIRS AND PARTS

ZCG Scalar does not promise the availability of facilities for the repair of the goods sold or the availability of parts for such goods.

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## 17) INDEMNITY

To the full extent permitted by law the Buyer :

- a) Agrees to indemnify and at all times hereafter to keep indemnified and hold ZCG Scalar, its servants and agents and each of them harmless against all claims for loss or damage (whether as a result of negligence or otherwise) arising directly or indirectly out of the Buyer's use, possession, ownership or resale to a third party or out of the use possession or ownership by such third party of the goods and/or services or any part or parts thereof whether separately or in combination with any other equipment or material.
- b) Agrees that the indemnity in paragraph (a) of this Clause shall survive the termination of this Contract and shall extend to cover all alleged default or defect in the goods and/or services or part or parts thereof or instructions supplied for use in connection with the goods and/or services or out of any failure of the goods and/or services to perform a particular task or to achieve a particular result or to comply with any particular specifications.

## 18) FORCE MAJEURE

To the full extent permitted by law the Buyer releases ZCG Scalar from all and any liability for and in connection with or arising out of any failure or deal in performance of its obligation hereunder due in whole or in part to any cause whatsoever beyond ZCG Scalar's reasonable control.

## 19) IMPLIED CONDITIONS AND WARRANTIES

All implied conditions and warranties (statutory or otherwise) are hereby expressly excluded from this Contract insofar as they are capable of being excluded by Agreement.

## 20) COLLATERAL WARRANTY

Any collateral warranty that may have otherwise arisen from any statement or representation oral or in writing that may have been made by any servants or agents of ZCG Scalar prior to the delivery of the goods and/or services is hereby expressly excluded to the full extent permitted by law and to that extent the Buyer releases ZCG Scalar from any liability in connection with any such statement or representation.

## 21) REPRESENTATION

To the full extent permitted by law the Buyer hereby releases ZCG Scalar from, and ZCG Scalar expressly disclaims, any liability under, in connection with or arising out of any representation or advice, oral or in writing that may have been made by any servant or agent of ZCG Scalar prior to or at the time of delivery of the goods.

## 22) FITNESS FOR PURPOSE

The Buyer shall not rely on ZCG Scalar's skills and judgement on whether the goods and/or services are fit for the purpose of which they may be required by the Buyer.

## 23) WAIVER

No forbearance or other indulgence granted to the Buyer shall in any way discharge the Buyer from any of the Buyer's obligations under this contract or otherwise affect any such obligation.

## 24) EXTENT OF LIABILITY

In any event ZCG Scalar's liability to the Buyer for any loss damage or injury arising directly or indirectly from the sale of non-domestic goods shall be limited to an amount equal to :

- a) the cost of replacing the goods;
- b) the cost of obtaining equivalent goods; or
- c) the cost of having the goods repaired;

whichever is the lesser amount.

## 25) NOTICES

Any notices or account rendered to be given to the Buyer by ZCG Scalar shall be in writing and may be mailed postage pre-paid, emailed, faxed or hand delivered to the postal address, email address, facsimile number or street address advised by the Buyer in writing. Any such notice or demand shall be deemed to have been received by the Buyer two (2) business days in the place of a receipt after dispatch if sent by mail, or the same business day in the place of a receipt after dispatch is sent by email, facsimile or hand delivery. Any notice rendered to or to be given to the Company by the Buyer shall be in writing and may be mailed postage pre-paid, emailed, faxed or hand delivered to the Company's office as appears in this agreement or any other address that ZCG Scalar may advise in writing for the purpose.

## 26) LAW

This Contract shall be governed by and construed in accordance with the laws of the State of Victoria, Australia.

## 27) STATUTORY RIGHTS

The Buyer acknowledges that this agreement is subject to any rights and obligations arising between the parties pursuant to any legislation or by implication of law and specifically acknowledge that this agreement is not intended and will not operate to override any rights and obligations created by the Trade Practices Act of Commonwealth of Australia (1974 as amended). To the extent that any provision of this agreement is void, voidable or repugnant to the provisions of that Act or any other Act of the State of Victoria that provision shall be deleted from this agreement but the remainder of the provisions of this agreement shall continue to apply.