

## **Southmicro PTY LTD – Terms and Conditions**

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Purchase of goods and services from Southmicro Pty Ltd are subject to the following terms and conditions. By agreeing to purchase or receive goods or services from Southmicro, you accept the following terms and conditions, without limitation or qualification.

### 1.0 Definitions In these conditions:

"Conditions" means these Conditions of Provision of Goods and Services;

"Customer" means a person, firm or corporation, jointly and severally if there is more than one, that requests goods or services from Southmicro;

"goods" means all products and other goods (including any software) supplied by Southmicro to the Customer;

"services" means all services supplied by Southmicro to the Customer;

"Southmicro" means Southmicro Pty Ltd (ABN 14 149 559 071); and

"Party" and "Parties" means severally and not jointly Southmicro and/or the Customer as the context requires.

### 2.0 Basis of Contract

2.1 Unless otherwise agreed by Southmicro in writing, these Conditions apply exclusively to every contract for the sale of goods or the provision of services by Southmicro to the Customer and cannot be varied or supplanted by any other terms or conditions without the prior written consent of Southmicro.

2.2 Any written quotation provided by Southmicro to the Customer concerning the proposed supply of goods or services is valid for 7 days and is an invitation only to the Customer to place an order based upon that quotation. These Conditions may be supplemented by additional

terms in Southmicro's quotation which are not inconsistent with these Conditions.

### 3.0 Charges and Payment

3.1 Payment for goods and services must be made by cash, cheque, VISA/Mastercard credit card or Online Banking Direct Deposit EFT on or prior to the completion of the provision of goods or services unless the Customer has a credit account with Southmicro.

3.2 All Southmicro onsite and remote work is chargeable with a one hour minimum charge, beyond the first hour they are charged in half hour units. Any part thereof is chargeable at the same rate as a full half hour.

3.3 All goods supplied by Southmicro are charged separately from the services.

3.4 Where there is any change in the costs incurred by Southmicro in relation to the goods or services, Southmicro may vary its price for goods or services on order to take account of any such change, without giving notice to the Customer.

### 4.0 Payment Default

4.1 If the Customer defaults in payment by the due date of any amount payable to Southmicro, or if any cheque drawn by the Customer is dishonoured, then all money which would become payable by the Customer to Southmicro at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and Southmicro may, without prejudice to any other remedy available to it:-

- (a) charge the Customer interest on any sum due at the rate of 2% above the corporate reference rate of Southmicro's principal banker. This interest shall be calculated daily and compounded every 30 days for the period from the due date until the date of payment in full;
- (b) charge the Customer for all expenses and costs (including legal costs on a solicitor/own client basis and dishonoured cheque fees) incurred by it resulting from the default and in taking whatever action it deems appropriate to recover any sum due;
- (c) cease or suspend for such period as Southmicro thinks fit, supply of any further goods or services to the Customer;
- (d) by notice in writing to the Customer, terminate any contract with the Customer so far as unperformed by Southmicro; without effect on the accrued rights of Southmicro under any contract.

4.2 Clauses 4.1(c) and 4.1(d) may also be relied upon, at the option of Southmicro:

(a) where the Customer is an individual, he or she becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or

(b) where the Customer is a corporation, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, provisional liquidator, administrator, receiver or receiver and manager appointed, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.

#### 5.0 Passing of Property

5.1 Until full payment in cleared funds is received by Southmicro for all goods supplied by it to the Customer, as well as all other amounts owing to Southmicro by the Customer:

(a) title and property in all goods remain vested in Southmicro and do not pass to the Customer;

(b) the Customer must hold the goods as fiduciary bailee and agent for Southmicro;

(c) the Customer must keep the goods separate from its goods and maintain the labeling and packaging of the goods; the Customer is required to hold the proceeds of any sale of the goods on trust for Southmicro in a separate account however failure to do so will not affect the Customer's obligation to deal with the proceeds as trustee;

(d) Southmicro may without notice, enter any premises where it suspects the goods may be and remove them, notwithstanding that they may have been attached to other goods not the property of Southmicro, and for this purpose the Customer irrevocably licenses Southmicro to enter such premises and also indemnifies Southmicro from and against all costs, claims, demands or actions by any party arising from such action.

#### 6.0 Risk and Insurance

The risk in the goods and all insurance responsibility for theft, damage or otherwise in respect of the goods shall pass to the Customer immediately upon delivery of the goods to the premises nominated by the Customer.

## 7.0 Performance of contract

Any period or date for delivery of goods or provision of services stated by Southmicro is intended as an estimate only and is not a contractual commitment. Southmicro will use its reasonable endeavours to meet any estimated dates for delivery of the goods or completion of the services.

## 8.0 Southmicro Warranties

8.1 If we cannot provide you with a solution to your problem, we will not charge you for those services in respect of that problem (**No Fix, No Fee Guarantee**). In some cases, the solution may be that you need to upgrade or replace your software or hardware. If we advise you to do so and you choose not to upgrade or replace your software or hardware, you acknowledge that we have met our commitment to you by providing you with a solution to your problem, whether or not you choose to implement that solution.

8.2 All services supplied shall be free from defects for a period of 10 days from the date of delivery. All goods supplied shall be free from defects in materials and workmanship for a period of 1 year from the date of delivery. Project based activities which will be deemed to be complete and free from defects at project sign off stage.

8.3 Nothing in this clause 8 is intended by the parties to be, and shall not be construed or interpreted to be, a representation, term, warranty or condition that the operation, use or functionality of any goods or products supplied by Southmicro (including any software) will be uninterrupted or error free. Customer understands and accepts that all such goods and products (and information technology and communications products generally), may have errors (or "bugs") and may encounter unexpected problems, and accordingly Customer may experience downtime and errors in the use of the goods and products. Without limiting the obligations set out in clause 9, Customer will put in place reasonable internal procedures and processes to enable it to minimise any inconvenience and any adverse impact of any such downtime or error.

8.4 Southmicro will comply with its obligations under the Privacy Act 1988. Customer must read and shall be deemed to have read the Privacy Policy

(<http://www.southmicro.com.au/documents/privacypolicy.pdf>) . Customer agrees and consents irrevocably to

Southmicro's use of Customer's personal information in accordance with the Privacy Policy.

#### 9.0 Customer's Responsibilities

9.1 Customer shall be solely responsible for all data inputs, the manner of use of the goods by all those to whom it provides access and all outputs derived, and all other results of such processing.

9.2 Customer shall comply, at its own expense, with any recommendations and guidelines with respect to the use of the goods, including any adjustments or replacements required in respect of equipment and software that is incidental or collateral to the use of the goods.

9.3 Customer shall ensure that its operators are adequately trained and informed as to the use of the goods and shall comply with guidelines and procedures supplied by Southmicro and/or any third party manufacturer from time to time.

9.4 Customer shall promptly report errors or faults in the operation of any aspect of the goods or any provision of the services in accordance with applicable fault reporting procedures from time to time.

9.5 Customer shall perform general "housekeeping", testing, adjustment and/or maintenance as recommended by Southmicro in respect of any goods supplied by Southmicro in order to maximise the availability of and performance of the goods or permit performance by Southmicro of any of its obligations hereunder.

9.6 Customer agrees to exercise due care and carry out such precautions which may be recommended by Southmicro or otherwise required as a matter of prudence in connection with the performance by Southmicro of any of its obligations hereunder, for example, but without limiting the generality of the foregoing, advising its staff of system restarts or scheduled downtime, recording of error information, and will co-operate with other system administration activities such as, but not limited to, running diagnostic tests and operational readiness tasks.

9.7 The Customer shall as a fundamental term of these Conditions back up all software, data and files that are stored on its computer and/or on any other storage devices it may have prior to the arrival of the Southmicro technician. Southmicro and/or its third party service provider shall not

be responsible at any time for any loss, alteration or corruption of any such software, data or files.

## 10.0 Liability

10.1 To the full extent permitted by applicable law, all conditions, warranties, representations, indemnities and guarantees with respect to the goods and/or the services, or other goods or services that may be provided by Southmicro under these Conditions, that may otherwise be implied by statute, law, equity, trade custom, prior dealings between the Parties or otherwise (including, but not limited to, any implied warranty of merchantability, fitness for particular purpose, quiet enjoyment or non-infringement) are hereby expressly excluded.

10.2 Except to the extent specifically provided in these Conditions, Southmicro's sole liability to Customer for any and all breaches of any term or terms of these Conditions, whether express or implied, shall be limited to:

10.2.1 subject to sub-clauses 10.2.2 and 10.2.3, the aggregate amount of the fees and charges paid by the Customer under these Conditions as at the date of the breach;

10.2.2 in relation to goods if supplied to Customer as a consumer (as defined in the Trade Practices Act 1974):

- (a) the replacement of the goods or the supply of equivalent goods; or
- (b) payment of the cost of replacing the goods or acquiring equivalent goods; or
- (c) the repair of the goods or payment of the cost of having the goods repaired; and

10.2.3 in relation to services if supplied to Customer as a consumer (as defined in the Trade Practices Act 1974):

- (a) the supplying of the services again; or
- (b) the payment of the cost of having the services supplied again, as in each case Southmicro may elect.

10.3 In no event shall Southmicro be liable to Customer or to any third party under or in connection with these Conditions or in respect of the use of (or failure or performance of) the goods or the supply of the services for:

10.3.1 malfunctions or failures caused directly or indirectly by:

- (a) any third party;
- (b) actions of Southmicro that were expressly or impliedly authorised by Customer, or by Customer's employees or agents;
- (c) accident, misuse or abuse by anyone other than the Southmicro;
- (d) alteration or modification of the goods by anyone other than the Southmicro;
- (e) products (including any hardware or software) not licensed or supplied by Southmicro that are attached to or used with the goods;
- (f) Customer's failure to provide a proper operating and working environment for the goods;
- (g) damage during any movement, relocation or re-installation of the goods;
- (h) power surge or failure,
- (i) acts of God or acts outside Southmicro's control;
- (j) any other condition not arising under normal operating conditions; or
- (k) normal wear and tear; or

10.3.2 any loss or damage of any nature arising or caused directly or indirectly by any breach of the Customer's obligations or responsibilities set out in these Conditions.

10.4 Any replacement of parts under warranty will be carried out at the premises nominated by Southmicro. The cost and risk of transport of any defective part to the nominated premises is the responsibility of the Customer.

10.5 In no event will Southmicro be liable to Customer or to any third party under or in connection with these conditions or in respect of the use of (or failure or performance of) the goods or the supply of the services for:

10.5.1 any loss of profit, business interruption, loss of or damage to goodwill, and/or any expectation benefit;

10.5.2 Customer's liability to any third party; or

10.5.3 incidental, consequential, special, exemplary or punitive damages of any nature, howsoever arising or caused, including without limitation the breach of these Conditions or any

expiration or termination of these Conditions, whether such liability is asserted on the basis of statute, contract, tort (including negligence or strict liability), equity or otherwise, even if Southmicro has been advised of the possibility of such loss or damage.

10.6 Southmicro will not be liable for any loss or damage suffered by the Customer where Southmicro has failed to meet any delivery date or cancels or suspends the supply of goods or services.

10.7 Nothing contained in these Conditions excludes, restricts or modifies any:

10.7.1 implied condition, warranty or other implied obligation in relation to these Conditions or the software and services where pursuant to applicable law to do so is unlawful or void; or

10.7.2 liability for fraud or deceit; or

10.7.3 liability for death or personal injury caused by the negligence of either Party.

11.0 Copyright in Software

11.1 Southmicro will not be responsible to the Customer or any third party for any breach of any software licence in respect of software provided to Southmicro by the Customer to be installed on a Customer's computer.

11.2 The Customer hereby warrants that it has a valid licence in respect of such software and shall indemnify Southmicro against any loss, damage, costs, harm or other expense whatsoever arising either directly or indirectly as a result of Southmicro installing software at the request of the Customer.

12.0 Cancellation

12.1 If, through circumstances beyond the control of Southmicro, Southmicro is unable to effect delivery or provision of goods or services, then Southmicro may cancel the Customer's order (even if it has already been accepted) by notice in writing to the Customer.

12.2 If the Customer gives less than 2 hours notice to Southmicro to cancel any request for on-site service, then Southmicro will charge a cancellation fee of \$148 for the loss and damage caused.

13.0 Same Day On-Site Computer Service or it's Free Guarantee

"Same Day or It's Free" guarantee is only available in Sydney. This guarantee applies exclusively to



service scheduled with us through our service hotline 1300 722 621 for Windows-based systems. Same day service must be requested over the phone no later than 10am Monday through Friday, excluding holidays. We may assign specific appointment times at our discretion, either for our own purposes or as a courtesy to you, but we only guarantee that a technician will arrive by midnight. Your request for specific appointment times are not covered by this guarantee in any way. This guarantee only applies to the initial visit by our technician and does not ensure that all necessary work can be completed on the same day. Any changes made by you to a same day service request that is already scheduled void this guarantee in its entirety. In the event we are unable to provide same day service to a customer, our only liability is to provide a credit of up to \$296 including GST maximum toward labour charges on the next available appointment scheduled by you through our service hotline as listed above. This offer is limited to one per customer. Additional restrictions may apply. We may cancel this offer at any time.

#### 14.0 No representation or reliance

14.1 The Customer acknowledges that neither Southmicro nor any person acting on behalf of Southmicro has made any representation or other inducement to it to enter into these Conditions, except for representations or inducements expressly set out in these Conditions.

14.2 The Customer acknowledges and confirms that it does not enter into these Conditions in reliance on any representation or other inducement by or on behalf of Southmicro, except for representations or inducements expressly set out in these Conditions.

14.3 Without limiting the generality of clauses 13.1 and 13.2, Customer understands and hereby confirms that:

- (a) its decision to enter into these Conditions was, and is, not based on any promise, representation, statement, warranty or undertaking made or given by Southmicro or any person on its behalf in relation to the capacity, uses or benefits that might or would be derived or obtained from the goods or services, except as expressly set out in clause 8, and
- (b) Customer has relied on its own skill and judgement in deciding to purchase and acquire the goods and services.

## 15.0 Entire Agreement

15.1 To the extent permitted by law, in relation to its subject matter, these Conditions:

15.1.1 embody and constitute the entire legal and contractual relationship of the Parties, including the entire terms agreed by the Parties; and

15.1.2 supersede, replace and terminate by mutual consent any prior written or oral representations, negotiations, understandings, agreements or contracts between the Parties.

## 16.0 Governing law

16.1 This Agreement is governed by and must be construed according to the law applying in New South Wales. The Parties hereby irrevocably submit to the exclusive jurisdiction of the courts of New South Wales.