

November , 2008 US

Ref: **HQ-T&C**

TERMS AND CONDITIONS

- 1) **GST / PRICE:**
Our prices are generally quoted without GST added. All invoices will state our quoted price plus 10% for GST, giving a total at the bottom of the invoice.
- 2) **DELIVERY:**
The delivery period quoted commences from the date the company receives sufficient information to proceed with supply or from the date the company received the purchaser's written order - whichever is the latter. Quoted delivery dates are subject to confirmation when placing the order. The company shall not, in any event, be liable to the purchaser for any loss or any other consequential damage caused to the purchaser by any delay in the delivery or any non-delivery of the goods or any part thereof.
- 3) **ACCEPTANCE:**
This quotation is not to be construed as an offer or obligation to sell and the company (Balmoral Technologies Pty Ltd) reserves the right to accept or reject any orders received. Your written order for the above goods and the written acceptance of your order will form a contract for the supply of the above goods.
- 4) **VALIDITY:**
This quotation is open for acceptance for a period of thirty (30) days and thereafter is subject to confirmation before acceptance.
- 5) **TERMS OF PAYMENT:**
Nett case thirty (30) days from dated month of invoice. If payment is not forthcoming within fourteen (14) days after the due date, BT has the right to withhold any further deliveries until payment is made. If the goods require storage, then the conditions of Clause 6 shall also apply.
- 6) **PRICE VARIATION:**
Our price is subject to variation in the exchange rate. Our price is based on the exchange rate of AUS\$1 = US\$ 0.70. The sale price will vary proportionally with the exchange rate and will be calculated by the following formula:

New sale price =
$$\left(1 + \frac{0.70 - (\text{New exchange rate})}{0.70} \right) \times \text{Quoted sale price}$$

This formula will only be applied to the sale price of the Goods when the exchange rate moves more than +/- 2c. to the AUS\$. The new exchange rate will be based on the date the Goods enter the country, even if this date may be several months prior to our invoice date.
- 7) **CANCELLATION OR VARIATION:**
An order may be varied only if such variation is accepted by Balmoral Technologies Pty Ltd (hereinafter referred to "BT") in writing and any variation or cancellation by the purchaser (whether or not it has been agreed to by BT) may only occur on terms which will provide for BT to be indemnified by the purchaser against any loss or damage.

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8) **WARRANTY:**

The goods which form a part of this contract are guaranteed after date of despatch, against faulty workmanship, materials or design for a period of twelve (12) months, after which all liability on the part of BT ceases. All defective equipment should be returned free into our store for BT to inspect defects before replacement. Any unauthorised repairs or alteration to the equipment shall invalidate the warranty.

Other parts only have the manufacturer's warranty, e.g. battery, tubes, screens, etc.

9) **STORAGE:**

If delivery is delayed for any reason beyond BT's reasonable control for a period of fourteen (14) days after the date on which the purchaser is notified that the contract goods or any completed items forming part thereof are ready for delivery, the risk of such goods shall forthwith pass to the purchaser, and BT shall be entitled to present invoices to the purchaser for payment in accordance with Clause 9. If the purchaser fails to take delivery of the goods in accordance with the preceding sentence, BT may arrange suitable storage of such goods at BT's premises or elsewhere and all costs of such storage, insurance, demurrage, handling and other charges incidental to such storage shall be to the purchaser's account.

10) **PROPERTY AND RISK:**

Notwithstanding any other term of these Conditions of Sale or the application of any legislation on the subject of the sale of goods, the Purchaser and BT hereby agree that:

a) the risk in the Goods supplied to the Purchaser by BT shall pass to the Purchaser upon delivery thereof, but ownership and property in them shall not pass to the Purchaser until the Purchaser has paid BT in full for the Goods.

b) Until payment in full has been made by the Buyer to BT for the Goods, the Purchaser acknowledges and agrees that with respect to the Goods:

- i) That the Goods shall be treated by the Purchaser for all purposes as goods continuing to belong to BT, and shall mark the place where the Goods are stored with a sign worded to the effect 'ALL GOODS IN THIS LOCATION ARE THE PROPERTY OF BALMORAL TECHNOLOGIES PTY LTD.
- ii) The Purchaser irrevocably grants to BT, its agents, servants and licencees leave and licence without the necessity of giving any notice to enter on and into any premises occupied by the Purchaser in which BT has ownership and property as aforesaid without in any way being liable to the Purchaser or any person, company or assignee claiming through the Purchaser.
- iii) Upon each of the Goods being sold (ownership and property in the same being vested in BT) the Purchaser shall pay the proceeds of such sale into a separate bank account entitled "(FULL NAME OF THE PURCHASER) BT GOODS ACCOUNT" and shall advise BT at all times of the Bank, Branch and Account Number through which this Account is maintained AND FURTHER the Purchaser hereby agrees that all proceeds paid into that Account for whatever reason and at whatever time are held on trust for BT and shall only be remitted to BT.
- iv) The Purchaser shall keep separate and distinct records of the sale of each of the Goods in which ownership and property still vest in BT and shall provide copies of the same to BT upon demand.
- v) The Purchaser hereby acknowledges that whilst ownership and

property in the Goods remains with BT, the Purchaser is in a fiduciary relationship with BT and the Purchaser is the "fiduciary owner" of the Goods.

- vi) **The Purchaser acknowledges that until such time as each of the Goods (whilst ownership and property in it remains with BT) is paid for in full, the Purchaser holds each of the Goods on trust for BT.**
- vii) **BT acknowledges that upon receipt of the Purchaser's payment in full for each of the Goods, the ownership and property in each of the Goods so paid for shall immediately pass (without any actual or purported reservations by BT) to the Purchaser.**