

# itX Group Limited Trading As Briell Marketing

## Terms & Conditions of Trade

ABN 77 107 656 833 © Copyright – EC Credit Control Pty Ltd - 2003



We, and similar expressions, refer to itX Group Limited Trading As Briell Marketing (ABN 77 107 656 833 ) and any related or associated body corporate. You, and similar expressions, refer to you, our customer or proposed customer.

These conditions apply from 1 July 2010 and supersede any prior version.

1. **Quotations.** Any quotation we provide is not an offer capable of acceptance. That applies whether or not the quotation is in writing. A price estimate provided orally is not a quotation.
2. **Order acceptance.** We are not obliged to accept any orders from you. If you do place any order with us, then it becomes binding from the moment that we accept the order even if we do not tell you that it has been accepted.
3. **Price.** Our list prices ruling at the date that we accept a particular order apply to that order and that applies even where your order is pursuant to a quotation from us. The only exception is where you are placing the order pursuant to a specific written quotation from us, where the quotation specifies that the prices remain current for a particular period and you place your order inside that period. In that case, the quoted pricing applies subject to the other conditions set out below.
4. **Pricing ex-warehouse.** Our prices are for delivery ex- our nominated warehouse and you are responsible for taking delivery at that place. References below to delivery must be interpreted accordingly.
5. **Price Variations.** We may increase the applicable price for any particular item of goods ordered by you, to cover the full amount of any increase in our external costs for that item arising after the date that we accepted your order. However, that does not apply where there was a specific written quotation specifying the price would remain current for a particular period and your order was placed in that period. External costs include but are not limited to the dollar amounts of increases in our cost of obtaining supply or in freight or insurance costs or in associated taxes or indirect taxes (including but not limited to customs duties and stamp duties and including new or increased taxes and the like, but excluding any tax calculated on net profit) or storage, packaging or preparation costs and any increase in our costs due to exchange rate variations (calculated by reference to changes in our cost of obtaining appropriate foreign currency amounts from our bank).
6. **Time for payment.** You must pay us the applicable price for goods immediately the goods are available for you to take delivery, whether or not you actually then take delivery. The only exception is where we have agreed to credit terms for you for the particular order, in which case we will invoice you for the price as soon as the goods are available for you to take delivery and you must pay us the price within 30 days of the date of the invoice. Except where we have agreed to credit terms for you for the particular order, you must pay us in advance on our request the full amount of the anticipated price, and we will not order the goods or prepare them for delivery until we have received your pre-payment as cleared funds. We may apply any pre-payment or deposit from you towards the price, as soon as the price becomes payable.
7. **Postponement of delivery.** If you request that we postpone a delivery, we may immediately or at a later date pack, hold and invoice that part of the goods as if then delivered. You agree to pay (on our request) any storage charges that we incur, and on and from that time the goods will be at your risk, although they remain our property until full payment is made.
8. **Supply by instalment.** We may supply the goods in a particular order, by way of separate instalments. In that case, each instalment is deemed to be supplied under a separate order which is subject to these trading conditions.
9. **Credit.** We may decide to give you credit, but we are not obliged to do so merely because we accept a credit application from you or because we have previously given you credit under an arrangement which has expired or been terminated. If we do allow you credit terms, then you remain bound by these trading conditions and the credit terms are subject to any additional conditions that we set when we notify you of the approval of credit terms. We may decline to give you further credit at any time. If we do decline to give credit, that does not affect the conditions which apply to any amounts which you then owe to us.
10. **Representations in relation to credit approval.** Any credit terms that we extend to you are granted subject to the essential condition that you have made complete disclosure to us in your credit application of all material information relevant to our decision to extend credit and also kept us promptly informed of any material adverse change in your financial or business circumstances or of the matters of fact specified in your credit application. If you do not exercise your credit approval for 12 months, that approval lapses and if you want further credit you will need to re-apply and we may require updated information.
11. **Overdue payments.** If any amount you owe us is not paid within 7 days of the due date, then at our election all money that you owe us on any account becomes immediately payable despite any previously agreed credit conditions. In that case, we may also suspend supply or terminate any outstanding orders (including part orders). You must pay us interest at 3% above the rate set by the Commonwealth Bank of Australia on overdrafts in excess of \$100,000 per annum on any overdue amounts. Interest is calculated from the date of delivery (or when the particular goods were available for delivery), on outstanding balances up to and including the day of payment or (if that is not a normal working day for us) up to our next normal working day. Accruing interest is calculated and compounded daily.
12. **Securities.** Our rights are not limited by, or because of, any guarantee, indemnity, purchase money or other security interest, or other security that we hold in connection with your obligations.
13. **Packaging.** Unless otherwise expressly agreed by us in writing, packaging (if any) will be provided only in accordance with our standard practices from time to time. If we agree to any additional or special packaging for you, then you must pay us extra calculated at our ruling rates.
14. **Pricing revision, shortages, pre-delivery damage.** We will not recognise any claim for alleged incorrect pricing or for a shortage in a delivery or for any item being delivered in a damaged state, if the claim is not made within 7 days of delivery. When you or your carrier sign any delivery or consignment note or similar document on receipt of a delivery, that is conclusive evidence that you have received delivery without any shortage or damage that would have been visible on taking delivery without unpacking the goods. You carry all risk of goods from the point of delivery, including the risk of damage in transit after delivery.
15. **No right of cancellation.** We are not obliged to accept cancellation of any order once accepted, or the return of any goods once delivered. However, although we do not commit to do so, we may agree to accept a cancellation or return where the goods are standard goods that we normally carry in stock. We are not bound by any decision to accept a cancellation or return except where we have issued a Return of Materials Authorisation, and then only as

specified in the particular Authorisation. Subject to what may be specified in the particular Authorisation, goods being returned must be accompanied by a copy of the relevant Authorisation; must be returned within 30 days of delivery; and must be returned in the same packaging and condition as when delivered. Where we do accept a cancellation or return of goods, you must pay a cancellation and re-stocking fee set by us, not exceeding 10% of the full original price for the particular goods. We may offset the fee against any credit and issue you with a credit note or refund (as we choose) for any balance.

16. **Your materials.** You warrant as an essential condition that there will be no infringement of the rights of any third party caused by you supplying us with, or us acting on, any design, specification, instructions or other materials supplied by you in connection with any particular order. You must indemnify us against any liability arising out of any breach of that warranty.
17. **Intellectual property rights.** Nothing in our dealings with you will confer any express or implied right on you in relation to any of our intellectual property and you must be aware that we do not have the right to grant you any express or implied rights in relation to the intellectual property of any manufacturer or other third party. Where expressly or by implication a manufacturer intends or might be presumed to intend that you have rights to use firmware or software that comes with particular goods supplied by us which have been paid for by you, you will have our tax invoice as evidence to support your claim to those rights, but ultimately that is a matter between you and the manufacturer. This does not limit clause 30.
18. **Manufacturer.** We will use our reasonable endeavours to obtain for you the benefit of any warranty from the manufacturer of any goods that we supply to you. This provision does not require us to commence legal proceedings or incur legal costs. We make certain endeavours to ensure that goods supplied by us are sourced from reputable and qualified manufacturers based on appropriate product model or type certifications, by making preliminary enquiries about suppliers and by making preliminary checks or certifications. It is not practicable for us to test individual items for compliance or defects prior to supply.
19. **Sale by description.** We sell goods sourced from manufacturers and other suppliers and sell to you based on description. You decide what purpose to use those goods for or for which to re-supply those goods. Any details, performance figures or specifications or the like that we provide, are approximations provided by us in good faith based on advice from the relevant manufacturer or supplier to us. They do not represent any endorsement by us or reflect any independent assessment by us, and are provided only for general guidance. A particular performance figure or specification must be interpreted after allowing an approximation tolerance and even then may not be obtainable or applicable in all circumstances. We are not supplying any service or advice of any nature. This condition applies despite any comment or representation made or implied by us. We intend that you do not rely on any advice from or representation by us unless made in writing and signed by one of our directors. In relation to any order we do not intend you to rely on any prior agreement, representation or negotiation by us or by any agent of ours or by any third party, unless made by us in writing and signed by one of our directors.
20. **No other representations.** We rely on the following warranties from you as essential conditions. You have not relied on any representation made or implied by us or arising out of or implied by our conduct, nor upon any description, illustration or specification contained in any document produced by us, including any catalogue

or publicity material, unless made in writing for the purposes of this transaction and signed by one of our directors. To the extent that we have made or implied, or by conduct given rise to or implied, any representation that is not expressly stated in these conditions, you are not proceeding in reliance on the representation because you have had and taken the opportunity to independently check and form your own view about the significance, and the accuracy or otherwise, of the representation. Without limitation, you acknowledge that you are not relying on being able to make any claim against us, for any representation made or conduct occurring before, under or in connection with any order, beyond the claims that can be made, and the limits applying, as provided in these trading conditions.

21. **Spare parts.** We are not in a position to offer any assurance that spare parts or service will be available for particular goods. We are not liable if we are unable to obtain spare parts, or to provide service, for particular goods supplied.
22. **Estimated delivery times.** Delivery times are estimates only and we are not liable for minor delays in delivery.
23. **Unexpected delay.** This condition applies if something happens which is beyond our reasonable control which makes it impossible, more difficult or more expensive for us to perform our obligations in our usual way. In those cases, we may wait until it is again possible for us to perform our obligations in our usual way without additional difficulty or expense and we are not liable for any delay (or failure to deliver) which results. Without limiting those general words, that applies where we have problems due to accidents, strikes, transport difficulties or unavailability or shortages of stock.
24. **Exclusion of implied conditions.** The law implies various terms, conditions and warranties which might apply to us supplying goods or services to you. We exclude all of those terms, conditions and warranties, and any other terms, conditions and warranties which might otherwise have been implied by custom or otherwise, to the fullest extent permitted by law. We give no guarantees or warranties. However, see also the following condition.
25. **Trade Practices Act etc limits.** Provisions of the Trade Practices Act and other statutes in some cases either cannot be excluded, restricted or modified; or can only be restricted or modified to a limited extent. If any such provision does apply, then to the extent permitted by law our liability under that provision is limited as follows. Our liability in relation to goods is limited at our option to replacement of the goods or the supply of equivalent goods; or repair of the goods; or payment of the cost of replacing the goods or of acquiring equivalent goods; or payment of the cost of having the goods repaired. Our liability in relation to services is limited at our option to the supplying of the services again; or the payment of the cost of having the services supplied again.
26. **Other damages claims excluded.** Except as stated above, we are not liable for, and you do not rely on being able to claim against us for, any loss or damage or Consequential Damage under or in relation to any agreement for us to supply goods, services, firmware or software or anything done or omitted in that regard or for that purpose, or in relation to any representation or conduct before, under or in respect of any order, and whether or not the possibility or potential extent of the loss or damage or Consequential Damage was known or foreseeable whether in contract or for negligence or any other tort or for breach of statutory, fiduciary or other duty (if any) and whether or not the act or conduct was authorised or required. Consequential Damage in these trading conditions includes loss of use, lost production, lost income or profits, loss of opportunity, lost savings, increased or wasted expenses, delay or lost time, loss of or damage to goodwill, increased operating costs, wasted or increased

financing costs, loss of or damage to data or records, loss of or unavailability of or damage to tangible or intangible property, claims made against you by others, losses or costs or expenses associated with identification, investigation, assessment, repair, replacement or servicing and any other economic loss or damage and any other special, indirect or consequential loss or damage.

27. **Variations in specifications.** We reserve the right to vary the specifications or performance criteria of any product from time to time and to obtain products from different sources, at our absolute discretion. We may do that without telling you provided we have reasonable grounds for believing that the alternative product offered is substantially similar to that previously offered or represents an improvement.
28. **Assignment and Subcontractors.** We may, and you must not, assign any part or the whole of any right or benefit of any contract we have with you. We may choose to use one or more subcontractors to fulfil our obligations under any contract we have with you.
29. **Ownership passes to you on payment.** Until you have paid the full price (including any associated charges), for everything in a particular order (Goods), we remain the owner of the Goods and also any actual or implied licence (Licence) for you or anyone else (including but not limited to any customer of yours), to use or resupply any firmware or software supplied by us, including any licence from any third party, is temporary and subject to the following. A payment by cheque does not count until we receive payment on the cheque. Until you become the owner of any Goods, we may enter into any premises or vehicle if we have reasonable grounds to expect that we may find any part of the Goods there. If you default in paying any part of the price or associated charges in connection with an order we may re-take possession of any of the Goods and we may terminate the Licence (including in relation to anyone else) by notice to that effect to you. That applies even if we hold some negotiable instrument or security for the amount unpaid. If you resell any of the Goods (even if mixed with other goods) before becoming the owner, or do anything towards passing any Licence to someone else, then you are acting as our selling agent although only to the absolute minimum extent necessary to protect our ownership and the temporary nature of the Licence. Until you become the owner of particular Goods, you must store those Goods separately from all other goods and in such a way as to allow the particular Goods to be identified and to allow them to be identified as ours and keep them fully insured at your expense. If any Goods, despite us remaining the owner, are sold by you or are the subject of any insurance claim, then the proceeds of sale or from any insurance claim belong to us and you must keep the proceeds separate and hold the proceeds in trust for us. That applies even if the Goods are mixed with other goods. These provisions apply even if we have agreed to extend you credit in relation to the supply of the Goods or the Licence.. Where and to the extent that we supply any Goods or Licence after the commencement of the Personal Properties Securities Act 2009, the following further provisions apply. Terms used here that are defined in that Act have the same meaning as in the Act. We have a purchase money security interest in the relevant Goods and the relevant Licence. We may do anything we choose so that our security interest is perfected. The following provisions of the Act do not apply – s.95 (notice of removal of accession), s.121(4) (enforcement of liquid assets), s.125 (obligation to dispose of or retain collateral), s.130 (notice of disposal), s.132(3)(d) (statement of account), s.132(4) (statement of account if no disposal) and s.143 (reinstatement). We reserve all our powers in relation to the purchase money security interest that are in addition to any right or power conferred under the Act. We may choose between our

various rights and powers to enforce our security interest, as we see fit and without limiting our other rights and powers. The collateral to which the security interest relates in each case is all goods that are Goods and all licences within the Licence, as stipulated above. You may not, and you must not attempt to, create any security interest over any Goods or Licence.

30. **Responsibility for goods once they leave our premises.** We are responsible for goods only whilst the goods remain on our premises. Once goods leave our premises and accepted by you or your agent upon delivery, you are responsible for them and from then, they are at your risk. We strongly recommend that you arrange to insure the goods for their full reinstatement value from that time and make sure your insurer is aware that ownership still will not pass to you until payment (see above).
31. **Acceptance of Goods:** Once you take delivery of goods supplied by us, you acknowledge that all of our Trading conditions are applicable and supersede any conditions or terms contained in your purchase order.
32. **Default.** In addition to our right of termination where a payment is overdue (see above), we also have the right to terminate all outstanding orders we have accepted from you if you fail to remedy any breach of your obligations within 7 days of a written notice from us that specifies the obligation and requires you to remedy the breach or observe the obligation (as the case requires), or immediately if an event of insolvency occurs in relation to you. If we duly terminate an outstanding order, you remain liable for (and we may recover from you) loss of bargain damages and also damages in respect of the breach on which termination was based. Event of insolvency means the happening of any of these events in relation to you – you becoming an insolvent under administration, or an externally-administered body corporate, for the purposes of the Corporations Act, or any application is made or other action taken which could result in that circumstance; or you are or state that you are insolvent or unable to pay your debts as they fall due; or you cease to carry on your business or any material part of it, or threaten to do so; or any writ of execution, garnishee order, Mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any of your assets; or if you are a body corporate, you are taken to have failed to comply with a statutory demand under the Corporations Act; if you are a body corporate, you enter into, or resolve to enter into, a scheme of arrangement or composition with, or assignment for the benefit of, or for any class of your creditors, or propose a reorganisation, moratorium or other administration involving any of them (except for a bone fide reconstruction or amalgamation while solvent); or if you are a body corporate, you resolve to wind yourself up, or otherwise dissolve yourself, or give notice of intention to do so (except for a bone fide reconstruction or amalgamation while solvent); or anything analogous or having substantially similar effect to any of the circumstances or events specified above, happens in relation to you under the law of any applicable jurisdiction.
33. **Certificate of debt.** You are bound by any certificate signed by any of our directors or solicitors which shows any amount or calculation relevant to what you owe us. The only exception is where you can prove the certificate is wrong.
34. **Finance company arrangements (if any).** If you wish to lease or to finance the purchase of goods from us through a financier then our trading conditions still apply (with only the minimum changes necessary) between you and us. Our trading conditions still regulate our rights, obligations and liabilities both to you and to the financier and you must indemnify (protect) us against any claim to the contrary by the financier.

35. **Variation.** These conditions can only be varied by an itX Group Limited Trading As Briell Marketing authorised officer or delegated officers, signing a document which states the variation, and the transaction to which the variation applies.
36. **Governing law.** These conditions are governed by and are to be interpreted according to the laws in force in New South Wales. You and we submit to the non-exclusive jurisdiction of the Courts of New South Wales.
37. **Waiver.** We do not waive any right, power, privilege or remedy because of any failure, delay, relaxation or indulgence on our part.; nor does any single or partial exercise of any right, power, privilege or remedy preclude any other or further exercise of that or any other right, power, privilege or remedy. No waiver is valid or binding on us unless in writing, duly signed by one of our authorised officers.
38. **Blanks.** We may complete blanks, and correct any obvious errors, in any documentation relating to an order.
39. **Notices.** All notices you and we give each other must be in writing and signed. A notice from us may be signed by any of our managers, directors or solicitors. Notices must either be delivered by hand or sent by prepaid post. Notices must be given at our Sydney head office (for us) or (for you), any address shown for you in anything you have supplied to us, or a changed address of which due notice has been given. Notices are deemed given on the day of delivery if delivered between 9am and 5pm on a day in which banks are open in Sydney that is not a Saturday, Sunday or public holiday, or on the next such day following delivery if delivered at some other time, or two days after posting if given by prepaid post. Notices must not be given by facsimile.
40. **Trade Markings and IP Rights.** You may refer to goods acquired from us by their associated names, including associated trade marks and logos, provided that such reference is not misleading nor prejudicial in any way to us or our or our suppliers' intellectual property rights. You may not remove or alter any serial numbers, trade marks or other markings or get-up, nor may you co-brand or co-logo any goods provided by us. You do not acquire any right to any of our intellectual property. You must not incorporate any of our trade marks into your trade marks, company names, Internet addresses, domain names, or any other designations.
41. **Publicity.** We may use your name in promotional materials, including press releases, presentations and customer references regarding the sale of any goods. You give us that permission free of charge for worldwide use in any medium. However, we will obtain your prior approval for publicity that contains quotes or endorsements attributed to you.
42. **IP Infringement.** If there is any allegation or apprehension that any goods we have supplied to you infringe the rights of others you must tell notify us and must give us the opportunity to modify, alter or substitute the alleged infringing item or items. This provision is in addition to our other rights.
43. **GST.** Anything we might have said to you about GST in connection with these conditions was only intended to reflect our current understanding and may not have been applicable in your particular circumstances. We recommend that you obtain and only rely on your own independent expert advice in relation to GST in particular. GST, tax invoice and taxable supply in these conditions have the meanings defined in A New Tax System (Goods and Services Tax) Act 1999 as may be amended or substituted from time to time. If those definitions are repealed, then those words have the meanings defined for such comparable terms as we may reasonably identify in any comparable legislation. All of our prices and charges are stated exclusive of GST, unless specifically stated otherwise. Despite anything else in these conditions to the contrary, to the extent that we
- are liable to pay GST in connection with any taxable supply pursuant to these conditions (the affected supplies) - (a) We may add to each of the amounts payable by you for the affected supplies, an allowance in respect of GST as reasonably calculated by us (for past, present or future GST liabilities) and you must pay us the higher amount which results. (b) Any amount payable under these conditions, including an amount payable because of the previous provisions, remains payable whether or not there is disclosure of any amount included on account of GST. (c) We must comply on demand with our obligations in relation to the issue of any relevant tax invoice to you.
44. **New Zealand GST.** For goods supplied in New Zealand. You and we agree that section 8(4) of the New Zealand Goods and Services Tax Act 1985 will not apply to the supply of goods and services supplied under this Agreement by itX Group Limited Trading As Briell Marketing and the goods and services are deemed to be supplied in New Zealand and will be subject to GST at the rate applicable at the time of supply. All of our prices and charges are stated exclusive of GST, unless specifically stated otherwise. Despite anything else in these conditions to the contrary, to the extent that we are liable to pay GST in connection with any taxable supply pursuant to these conditions (the affected supplies) - (a) We may add to each of the amounts payable by you for the affected supplies, an allowance in respect of GST as reasonably calculated by us (for past, present or future GST liabilities) and you must pay us the higher amount which results. (b) Any amount payable under these conditions, including an amount payable because of the previous provisions, remains payable whether or not there is disclosure of any amount included on account of GST. (c) We must comply on demand with our obligations in relation to the issue of any relevant tax invoice to you.
45. **Information and privacy arrangements.** We may collect personal information in connection with our dealings with you. If so, we will abide by our privacy policy. A copy of that policy is available on our website <http://www.itX.com.au> or, if you require, please ask for a copy.
46. **Allocation of receipts.** We may apply any payment we receive from you, or on your behalf, to and between any amount that you owe to us or any account you have with us, as we choose.