



Digicore Standard Terms and Conditions of Sale – Effective March 2023

In this document:

- (a) “**ACL**” means the *Australian Consumer Law* which is contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth);
- (b) “**Digicore**” means Perfekt COM Pty Ltd ACN 099 311 618, trading as Digicore;
- (c) “**Amount Payable**” means, at any time, all amounts payable by the Customer to Digicore at that time (whether or not those amounts have become due for payment under clause 4 or any other provision of the Terms and Conditions) in connection with the Goods or a Contract (including, without limitation, any invoiced amount, interest, fees, costs or expenses);
- (d) “**Customer**” means the customer specified in an application for commercial credit or if there is no application, the person placing the Order, or on whose behalf the Order is placed, with the Supplier;
- (e) “**Supplier**” means Digicore;
- (f) “**Default**” is defined in clause 6;
- (g) “**Contract**” means:
 - (i) Any contract to which these Terms and Conditions are expressed to form part; and,
 - (ii) For the supply of Goods pursuant to an Order, the contract (which includes these Terms and Conditions) formed for the supply of the Goods to the Customer upon an Order Acknowledgement;
- (h) “**Goods**” means any goods, products, services or materials supplied or to be supplied by the Supplier at any time and from time to time including, without limitation, any goods specified in an Order Acknowledgement or invoice;
- (i) “**Order**” is an order or offer to purchase described in clause 1;
- (j) “**Order Acknowledgement**” is defined in clause 1;
- (k) “**Transaction Tax**” means the goods and services tax as well as any identified or new transaction taxes that come into existence after the effective date of the Terms and Conditions;
- (l) “**PPSA**” means *Personal Property Securities Act 2009* (Cth);
- (m) “**Terms and Conditions**” means the terms and conditions set out in this document, as modified or amended in relation to a particular Order by a written Order Acknowledgement or Sales Agreement or in accordance with clause 14;
- (n) unless otherwise stated, an expression used or defined in the *Corporations Act 2001* (Cth) has the same meaning in the Terms and Conditions;
- (o) words indicating the singular include the plural and vice versa

1. Orders, Order Acknowledgements and Terms and Conditions

- (a) An order or an offer to purchase can be made by the Customer in writing or verbally. An Order is accepted when the Customer receives an acknowledgement of the Order from the Supplier, the Supplier appropriates the relevant Goods for delivery to the Customer or the Supplier delivers the relevant Goods to the Customer, whichever first occurs (“**Order Acknowledgement**”).
- (b) The Terms and Conditions apply to every Order, unless otherwise agreed in writing by the Supplier. Acceptance of Goods by the Customer is conclusive evidence that the Terms and Conditions apply and are binding on the Customer.
- (c) The Contract for the supply of Goods pursuant to an Order constitutes the entire agreement between the Supplier and the Customer with respect to that Order. All prior negotiations, proposals, previous dealings, correspondence, trade custom and/or trade usage are superseded by and will not affect the interpretation of that Contract.
- (d) If at any time in relation to the supply of the Goods, the Customer provides, refers to, submits or otherwise uses terms and conditions other than the Terms and Conditions, such terms and conditions will not form part of, or be incorporated into, the Order or the Contract.

2. Prices

- (a) Unless otherwise agreed in writing, the price charged for the Goods shall be (1) exclusive of any Transaction Tax, and (ii) as per the price ruling as determined by the Supplier at the date of delivery. Any price indications or price lists are subject to alteration in accordance with the price ruling as at that date of delivery.
- (b) Where a Transaction Tax applies to any supply made under the Terms and Conditions, the Supplier may recover from the Customer an additional amount on account of that transaction tax.
- (c) Notwithstanding any provision in the Contract, the Supplier may increase the price of Goods after an Order Acknowledgement and prior to delivery of the Goods if the price increase results from (i) an increase in the price of any inputs which comprise part of the Goods; or (ii) a change in requirements or scope of project by the Customer which comprise part of the Goods.
- (d) The Customer may, upon the alteration of the price charged for the Goods in accordance with this clause 2, cancel any Order (or part thereof) at the new price within 7 days of the Supplier providing notice of the change of price.

3. Delivery

The Supplier will make all reasonable efforts to have the Goods delivered to the Customer or its designated agent as agreed between the parties (or if there is no specific agreement then at the Supplier’s reasonable discretion), but the Supplier shall not be liable for (a) any failure to deliver or delay in delivery for any reason; or (b) any damage or loss due to unloading or packaging; or (c) except to the extent that such damage was caused by the negligent act or omission of the Supplier, damage to

property caused upon entering premises to deliver the Goods. Any costs incurred by the Supplier due to any failure by the Customer to accept the Goods at time of delivery will be reimbursed by the Customer to the Supplier. Except as required by law, the Supplier will be under no obligation to accept Goods returned for any reason.

4. Payment

For so long as the Supplier has agreed to provide credit to the Customer under the Terms and Conditions and has not exercised its powers to withdraw, refuse or suspend credit under clause 6(b) or 8(c) or otherwise, payment for the Goods must be made in full and received by the Supplier within fourteen days following delivery unless otherwise specified by the Supplier on any statement of account or invoice or unless the Contract or Sales Agreement specifies otherwise. Payment is only received by the Supplier when it receives cash or when the proceeds of other methods of payment are credited and cleared to the Supplier's nominated bank account.

5. Title and related matters

- (a) The legal and equitable title to the Goods will only be transferred from the Supplier to the Customer when the Amount Payable has been reduced to zero.
- (b) Until the Amount Payable has been reduced to zero, the Customer holds the Goods as bailee for the Supplier and a fiduciary relationship exists between the Customer and the Supplier.
- (c) If the Customer is in Default, in addition to the Supplier's other rights under the Terms and Conditions, the PPSA or any other applicable law, the Supplier may:
 - (i) take possession of the Goods, wherever they are located;
 - (ii) remove any Goods which have been installed into any asset; and/or
 - (iii) enter upon the Customer's premises for that purpose; and/or
 - (iv) appoint any person to be a receiver of all or any of the Goods.
- (d) Unless otherwise expressly agreed in writing, the Supplier will allocate and apply amounts received from the Customer in the following order:
 - (i) in or towards payment of any part of the Amount Payable which is not part of the purchase price of any Goods, in the order in which those amounts were incurred; and
 - (ii) secondly, in or towards payment of the purchase price of Goods in the order in which those Goods were invoiced.

6. Default

- (a) A party will be in Default if:
 - (i) it breaches a material term of any Contract and such breach is not remedied within 14 days of receiving notice from the other party requiring it to do so, unless such breach arises out of the supply of defective Goods, in which case the Supplier shall remedy the breach within such time as is reasonable in the circumstances;
 - (ii) in the case of the Customer being a body corporate, it becomes an externally-administered body corporate or has an application for winding up filed against it;
 - (iii) in the case of the Customer being an individual, it commits an act of bankruptcy or becomes an insolvent under administration;
 - (iv) in the case of the Customer, payment for the Goods has not been received by the Supplier by the due date for payment; or
 - (v) in the case of the Customer, any representation or warranty made by it in or in connection with a Contract, or any information provided by it to the Supplier in or in connection with a credit application, is incorrect, misleading or deceptive (whether by omission or otherwise) in any material respect; or
 - (vi) in the case of the Customer, the Supplier forms the opinion in its absolute discretion that the Customer's creditworthiness or credit standing alters from that indicated in its credit application or the Customer has defaulted on payment under the Other Terms.
- (b) If a party Defaults, the other party may:
 - (i) treat an Order Acknowledgement or the whole of the Contract as repudiated and sue for breach of contract; and/or
 - (ii) being the Supplier, refuse to supply or suspend supply of Goods to the Customer on credit or at all and/or amend the terms of any credit granted; and/or
 - (iii) being the Supplier, claim the return of any Goods in the Customer's possession where title has not passed to the Customer or exercise any other right or remedy available to it under the Contract, the PPSA or any other applicable law, including to enforce the security interests created by the Contract; and/or
 - (iv) being the Supplier, by notice to the Customer declare all monies owing by the Customer to the Supplier on any account immediately due and payable (including the Amount Payable).

7. Risk

Risk in the Goods passes to the Customer upon delivery (including all risks associated with unloading) or upon title in the Goods passing to the Customer, whichever is the earlier.

8. Credit

- (a) Any agreement by the Supplier to grant the Customer credit upon these Terms and Conditions has been or will be made on the basis of a credit application and such other documents and information as may be required by the Supplier.

- (b) Until the Supplier grants the Customer credit by notice in writing, or if having granted credit, the Supplier exercises its power to withdraw, refuse or suspend credit under clause 6(b) or 8(c) or otherwise under these Terms and Conditions, the Supplier will only supply Goods to the Customer on the basis of cash in advance.
- (c) The granting of credit does not oblige the Supplier to extend any particular amount of credit to the Customer and the Supplier may withdraw, refuse, suspend or limit credit to the Customer at any time, in its absolute discretion, without notice or providing any reason.
- (d) The Customer must notify the Supplier in writing if there is any change in the shareholding or ownership of the Customer or any material change in the Customer's financial position.

9. Force Majeure

The Supplier is not liable for failure to perform its obligations under the Contract to the extent and for so long as its performance is prevented or delayed without substantial fault or negligence by the Supplier because of circumstances outside the Supplier's control, failure of the Supplier's equipment, or failure of a supplier to the Supplier, provided that the Supplier gives notice to the Customer of the delay and uses reasonable efforts to remedy the cause of the delay quickly.

10. Representations and Fitness for Purpose

- (a) Except as expressly provided to the contrary in the Contract, all representations, warranties, guarantees and implied terms or conditions in relation to the Goods (whether implied or otherwise) are hereby excluded to the maximum extent permitted by law.
- (b) The Customer agrees that if it is aware (or should be aware) that the Goods, subject of an Order, are for a particular purpose or are required to possess special or uniform characteristics (including programming), the Customer will clearly specify that purpose or those characteristics in any such Order. The Customer agrees that, unless expressly agreed by the Supplier in writing, it has made its own enquiries in relation to the suitability of the Goods and does not rely on representations by the Supplier in relation to their suitability for a particular purpose or any steps which may need to be taken in relation to their use.

11. Limitation of Liability

- (a) The Supplier's liability to the Customer (and any party claiming through the Customer against the Supplier) for any claim for loss or damages (including legal expenses) made in connection with the Contract (including the supply of Goods described in the Contract) whether in contract, under any warranty or indemnity, in tort (including negligence), under statute, in equity or otherwise shall be strictly limited as follows (except to the extent that the law prohibits such a limitation):
 - (i) for any liability arising from Goods not meeting the specification or which are said to be otherwise defective or deficient, the Supplier's liability is limited to the cost of replacement of those Goods as soon as reasonably practicable, or the repair of those Goods or the repayment (or allowance) of the invoice price of those Goods (at the option of the Supplier);
 - (ii) for any liability arising from the services forming part of the Goods not meeting the scope or which are said to be otherwise defective or deficient, the Supplier's liability is limited to the provision of the services again or payment of the cost of having the relevant services provided (at the option of the Supplier);
 - (iii) for any liability that does not fall within the scope of clauses 11(a)(i) or (ii), the Supplier's liability for any loss or damage arising from or caused in any way by the Supplier, the Goods it supplies or the Contract is excluded (to the maximum extent permitted by law).
- (b) The Supplier shall not be liable, to the maximum extent permitted by law, for any indirect, special or consequential loss or damage of any nature whatsoever resulting from or caused in any way by the Goods it supplies, where "indirect, special or consequential loss or damage" includes: (A) any loss of income, profit, production, contract, customers, business opportunity or business; (B) any loss of goodwill or reputation; (C) any loss of value of intellectual property; (D) any loss or damage resulting from the loss or damage to goods other than the Goods.
- (c) Any claim by the Customer in respect of defective, non-conforming or damaged Goods must be made in writing within 14 days of the delivery of the Goods, unless a longer period is expressly agreed to by the Supplier in writing.
- (d) Despite any other provision of the Contract, the Supplier is not liable, to the maximum extent permitted by law, for:
 - (i) the cost of removal of Goods not meeting the specification or which are said to be otherwise defective or deficient, whether installed or otherwise;
 - (ii) the cost of installation of replacements for Goods not meeting the specification or which are said to be otherwise defective or deficient;
 - (iii) defects or deficiencies in Goods caused by improper installation or maintenance of Goods or related components or normal wear and tear and damage.

12. Waiver

Except as expressly set out in the Terms and Conditions, a party waives the right under the Contract only by written notice that it waives that right. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.

13. Severance

If a provision of the Contract would, but for this clause, be unenforceable:

- (a) the provision must be read down to the extent necessary to avoid that result;

- (b) if the provision cannot be read down to that extent, it must be severed without altering the validity and enforceability of the remainder of the Contract.

14. Variation and notices

- (a) The Supplier may at any time vary the Terms and Conditions applicable to future Orders and may notify the Customer of these changes or provide any other notice under or in connection with the Terms and Conditions by email, facsimile, post or, in the case of a variation of the Terms and Conditions, by publishing the revised Terms and Conditions or notice on its website. If the Supplier publishes the revised Terms and Conditions on its website, the revised Terms and Conditions are effective from the Effective Date noted in those Terms and Conditions. If the Supplier publishes the revised Terms and Conditions on its website, it may (but is not obliged to) notify the Customer that it has done so on any invoice or Order Acknowledgement.
- (b) Notices given by the Supplier will be deemed to be received:
 - (i) if given by email, on being sent, provided the notice is sent to the email address of an officer or employee of the Customer responsible for placing or administering orders for Goods and no "out of office" or other automated reply is received indicating that the message has not been or will not be received or read by the intended recipient;
 - (ii) if given by facsimile transmission to a facsimile number shown in the application for credit (or any other number provided by the Customer) by production by the Supplier of a copy of the facsimile transmission bearing the time and date of dispatch, on that date and at that time; and
 - (iii) if given by post, on the third day after posting.
- (c) The Customer agrees to regularly check the Supplier's website (www.digicore.com.au) for any notices of change to the Terms and Conditions. The Customer agrees to accept any notices from the Supplier as an agent for any guarantor.

15. Costs

The Customer must pay the Supplier all costs and expenses incurred by the Supplier in connection with a Contract including legal expenses (on a full indemnity basis), stamp duty (including fines and penalties) and costs incurred or payable by the Supplier in connection with registering, maintaining or releasing any security interest, charge or caveat in connection with a Contract, or the recovery of the Amount Payable or in otherwise enforcing the Supplier's rights against the Customer under a Contract. The costs of registering any PPSA financing statement will be paid by the Customer and may be invoiced or debited against the Customer's credit account.

16. Shortages

- (a) The Customer will inspect and check all Goods received as soon as practicable upon unloading. No claim by the Customer for shortages of Goods may be made unless such a claim is notified to the Supplier within 48 hours of such inspection.
- (b) The Supplier will endeavour to rectify any shortages as soon as practicable after receiving notice but will not be liable for or in respect of such rectification.

17. Privacy

- (a) Where the Customer provides the Supplier with personal information (as defined in the Privacy Act 1988) about any individual (including the Customer where applicable), the Customer must have that individual's consent to provide that information to the Supplier having regard to and for the purposes set out in this clause 17 and in the Supplier's Privacy Policy. This policy is available on request or via www.digicore.com.au and contains more information about the Supplier's handling of personal information.
- (b) The Supplier may collect, use and disclose that personal information for purposes relating to a Contract and to the Customer's credit application and account. This includes assessing the Customer's application, monitoring the value of and enforcing the security interests created by a Contract, reviewing credit arrangements on a periodic basis or in connection with changes (e.g. credit limit) as though assessing a new application., order fulfilment and delivery, market research, planning, business development, debt collection and customer relationship management. The Supplier may also conduct lawful and relevant credit and reference checks (including consumer credit checks on the Customer where the Customer is an individual), and deal with personal information in connection with any acquisition or potential acquisition of any part of the Supplier's business. Without the personal information sought, the Supplier may not be able to do these things, including fulfill orders and process credit applications.
- (c) The Supplier may provide marketing communications to the Customer by email and other means on an ongoing basis, unless the Customer opts out by contacting the Supplier or legal restrictions apply.
- (d) The Supplier may exchange personal information with other credit providers for purposes including to: assess a credit or guarantor application; determine credit/default status; and assess or comment on credit worthiness. Some of these third parties may be located in other countries. While these parties outside Australia will often be subject to privacy and confidentiality obligations, the Customer acknowledges and agrees for itself and as agent for each of its officers, employees, agents, contractors, guarantors and representatives that: (a) privacy obligations overseas may not always apply or may differ from Australian privacy laws; (b) the Supplier may not be accountable for the third party under the Privacy Act or for the overseas recipient's storage, use or disclosure of information; (c) individuals may not be able to seek redress under the Privacy Act for that disclosure or for the acts or omissions of the overseas recipient of the information; and (d) the third party may be subject to foreign laws which might compel further disclosures of personal information (e.g. to government authorities).