

# **COMPUTERVISION BUSINESS SOLUTIONS VIC PTY LTD**

**ACN 078 201 671**

## **TERMS AND CONDITIONS OF SALE**

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### Definitions

**"CVBS"** means Computer Vision Business Solutions VIC Pty Ltd. (ACN 078 201 671)

**"Agreement"** means the agreement for supply of Equipment and/or Services between CVBS and the Customer comprising these terms and conditions (as accepted in accordance with clause 1) and relevant Quotations.

**"Charges"** means all monies payable by the Customer to CVBS in relation to Services and/or the supply and (any) Implementation of Equipment, and includes all amounts payable under this agreement, including under clauses 3, 4, 8 and 15.

**"Customer"** means the person, its agents and/or assigns, including a firm or corporation, who receives a copy of this Agreement (whether or not forming part of a Quotation or any other document) and subsequently orders Goods or Services from CVBS.

**"Equipment"** or **"Goods"** means any tangible item, which CVBS agrees to supply to the Customer, and includes parts and supplies, which may be supplied under any warranty given in relation to the Equipment.

**"GST"** means a tax, any related additional tax, interest, penalty, fine or other charge imposed by or under a GST Act.

**"GST Act"** means the A New Tax System (Goods and Services Tax) Act 1999 and/or any other Act relating to the imposition or administration of a Goods and services tax.

**"Guidelines"** means any applicable guidelines issued by the Australian Competition and Consumer Commission in relation to Part VB of the Trade Practices Act 1974.

**"Implementation"** means installation and preparation of the Equipment for operation by the Customer in accordance with the Manufacturer's specifications.

**"Invoice"** means the attached invoice (if any), and otherwise any invoice issued by CVBS to the Customer for the provision of Goods or Services.

**"Manufacturer"** means the manufacturer of the Equipment or any part thereof, its agents and assigns.

**"Persons"** includes corporations, partnerships and unincorporated associations, and any other entity recognised by the laws of Australia.

**"Quotation"** means a written document issued by CVBS, which sets out the terms, in addition to these terms and conditions, upon which CVBS may sell the Equipment and/or Services to the Customer.

**"Services"** means any intangible service or offering required by the Customer, which CVBS agrees to provide to the Customer. These may include, but are not limited to, Installation, Project Management, Training, Consulting and Network Design.

**"Taxable Supply"** has the meaning given to that term in the GST Act.

**"Value"** has the meaning given to that term in the GST Act.

**"Works"** means any technical services related to any software development, personal computer or local or wide area networks or any other computer software or hardware. Where the context permits, a reference in this Agreement to **"Goods"** includes Services, and a reference to **"Goods or Services"** includes Goods and Services. Words importing the singular number shall include the plural and visa versa.

## 1. Agreement

1.1. Unless otherwise agreed in writing by CVBS, this Agreement prevails to the extent of any inconsistency between it and any terms and conditions appearing in any CVBS catalogue, price list, Quotation, or promotional material or elsewhere, or referred to by the Customer whether in an order or in any negotiations. These Terms of Sale apply to all agreements for the supply of Goods or Services by CVBS and shall be varied only where such variation is in writing and signed by a Director of CVBS. For the purpose of this clause “varied” and “variation” include “replaced” and “replacement” respectively.

1.2. Subject to clause 2.1, any purchase order placed by the Customer with CVBS constitutes an offer to purchase Equipment and/or Services and any terms contained in a purchase order placed by the Customer with CVBS in response to a Quotation do not form part of the Agreement unless subsequently accepted in writing by CVBS.

1.3. Where the Customer has agreed to purchase Equipment and/or Services from CVBS upon these terms and conditions, these terms and conditions shall be incorporated into every subsequent agreement for purchase of Equipment and/or Services by that Customer from CVBS unless specifically varied or excluded in the manner prescribed in clause 1.1.

## 2. Orders, Functionality and Performance

2.1. All orders for Goods or Services placed by the Customer with CVBS are subject to acceptance by CVBS, which may be withheld by CVBS in its absolute discretion. For the purpose of this Agreement, “acceptance” by CVBS means the earlier of:

- a) communication by CVBS to the Customer of a written statement that CVBS will deliver the Equipment and/or Services to the Customer (for the purposes of this clause, a statement that CVBS **can** fill such an order, or that it has the relevant Equipment in stock, is insufficient); and
- b) delivery of the Equipment and/or Services.

Any other form of confirmation of an order by a representative of CVBS shall only constitute a conditional acceptance of the order and shall be subject to CVBS considering such further matters as it deems appropriate, including, but not limited to, the Customer’s credit status and receiving details of the Customer’s sales tax registration or ABN (as the case may be).

For the purpose of this Agreement, “delivery”, in relation to Services, means completion of the Services.

2.2. Except to the extent that the law requires otherwise:

- a) All information, specifications or other data provided by CVBS in relation to the Equipment will be approximations only and small deviations or slight variations from them which do not substantially affect the functionality of the Equipment will not entitle the Customer either to reject the Equipment upon delivery or make any claim in respect of it. The Customer acknowledges the Manufacturer may at any time and without notice to CVBS vary the composition of or packaging for the Goods (or components for the Goods) and that CVBS does not undertake that any Goods supplied to the Customer will be identical to those previously purchased or advertised.

b) Information contained in user manuals or otherwise provided by CVBS (including information provided as part of any training) in relation to the performance or characteristics of the Equipment represents only a guide to the performance of the Equipment under optimum operating conditions. Factors, which may affect performance of the Equipment, may be obtained from CVBS on request.

c) The Customer acknowledges and accepts that, subject to the *Australian Consumer Law*, CVBS gives no warranties in relation to the software programs supplied by the Manufacturer with the Equipment or pre-loaded onto the Equipment and that the licences for all software programs supplied with the Equipment shall be between the end user (being the Customer) and the Manufacturer. The Customer also acknowledges that it shall not be entitled to make any claim, of any type, including a claim in relation to the performance of the software programs, against CVBS.

2.3. CVBS may at its sole discretion provide the Customer with training in relation to the Equipment at such additional costs as are agreed between the parties. CVBS gives no representation or warranty as to such training.

2.4 Clause 2.2 applies subject to the provisions of the *Australian Consumer Law*.

### **3. Price**

3.1. The price of Goods or Services shall be as set out in the Invoice or price list current at the date of placement of the order. CVBS reserves the right by written notice to the Customer at any time prior to delivery, to increase the price of the Goods or Services to reflect any increased cost to CVBS (such as, without limitation, any foreign exchange fluctuation, imposition or alteration of taxes or duties, or any increase in costs from the Manufacturer).

3.2. The Customer acknowledges that all amounts payable under this agreement have been, and will be, negotiated or calculated (as the case may be) without any allowance for a GST and are expressed as GST-exclusive amounts. The Customer must in addition to any other payments required by this agreement, pay or reimburse CVBS any amount of GST for which CVBS is or may become liable with respect to the Value of any Taxable Supply made under or in relation to this agreement.

3.3. The Customer acknowledges that, where CVBS provides Services under this Agreement, the Charges may include (and the Customer will pay to CVBS in accordance with the procedure set out in clause 4.6) amounts representing reimbursement of reasonable travel and other expenses incurred by CVBS in connection with providing the Services.

### **4. Payment**

4.1. Unless otherwise agreed by CVBS in writing, payments shall be in accordance to the terms stipulated on the tax invoice. Payment is required in full prior to shipping. For transactions in excess of \$10,000 a 30% deposit prior to ordering of system is required to cover build and services. The balance is required prior to shipping. Time shall be of the essence in relation to payments due.

4.2. Should the Customer fail to pay any amount to CVBS on the due date for payment, CVBS reserves the right to require the Customer to pay, and the Customer shall be liable to pay on demand, interest on that amount, calculated from the due date of the relevant Invoice at the daily rate of 3% above the indicator lending rate charged by National Australia Bank Limited (or such other bank as CVBS may nominate in writing prior to the due date for payment of the relevant Invoice) from time to time.

4.3. Notwithstanding anything else appearing in these Conditions, payment for all Charges shall become due and payable if the Customer: -

a) Fails to pay any Charges when due under, or is otherwise in breach of, the Agreement or any other agreement between the Customer and CVBS,

b) Is an individual and a bankruptcy application is filed in relation to the Customer, or the Customer enters into any composition or arrangement with its creditors,

c) Is a body corporate and:

(i) enters into any composition or arrangement with its creditors, enters into liquidation, or suffers a receiver and manager to be appointed in respect of all or part of its assets, or an application is made for, or an event occurs which would allow, any of such persons to be so appointed; or

(ii) allows an administrator or similar officer to be appointed in respect of all or part of its assets, or an application is made for, or an event occurs which would allow, any of such persons to be so appointed; or

(iii) is unable to pay its debts as and when they fall due or commits an act of insolvency.

d) any of the information provided to CVBS to establish the Customer's credit status is, in CVBS's reasonable opinion, false or misleading in any material particular; and

e) any of the events referred to in paragraphs (a), (b) or (c) occur in relation to any guarantor of the Customer's obligations under clause 9 of this Agreement, and a replacement guarantee in a form satisfactory to CVBS is not provided within 7 days of CVBS requesting it.

4.4. The Customer shall be liable without demand to reimburse CVBS for all bank fees incurred by CVBS in relation to cheques provided by the Customer, which are not accepted, by the Customer's bank when presented.

4.5. The Customer acknowledges that, if an order is cancelled, the Customer agrees to pay all expenditure incurred by CVBS in relation to the purchase of Equipment and Services to satisfy that order, which cannot be recouped from the Manufacturer, as well as any direct costs incurred by CVBS, including, but not limited to, freight, storage and handling costs.

4.6. Should CVBS hold or store Equipment or Goods due to a Customer delay in delivery and/or Installation, CVBS reserves the right to charge a reasonable fee for such services, together with any costs and disbursements incurred by CVBS in the process. The Customer must pay such amounts to CVBS within 7 days of receipt of an Invoice from CVBS specifying such fees, costs and disbursements.

4.7. Should the Customer require CVBS to manufacture or provide special cables, which are not supplied by the Manufacturer, or require specific additional services, such as additional testing or burn-in

procedures, CVBS reserves the right to charge a reasonable fee for such services together with any costs and disbursements incurred by CVBS in the process. The Customer must pay such amounts to CVBS within 7 days of receipt of an Invoice from CVBS specifying such fees, costs and disbursements.

4.8. Where payment of the Charges or part of the Charges is due prior to delivery of the Equipment and a Customer fails to make such payment, CVBS may withhold delivery and give the Customer a notice requiring payment to be made within not less than 7 days. Should the Customer fail to make the payment which is due within the time required by the notice, then the Customer will be liable to pay CVBS a cancellation fee (which is an amount to cover the Manufacturer's restocking Charges and other costs incurred by CVBS) equal to fifty (50) per cent of so much of the Charges which relate to the sale of the Equipment.

## **5. Delivery**

5.1. Any time or date named by CVBS for delivery is given as an estimate only, and CVBS shall not be liable to make good any damage or loss whether arising directly or indirectly out of delay in delivery. The Customer shall supply such details and/or resources and shall provide all reasonable access to its premises as may be necessary (or required by CVBS) to complete delivery.

5.2. Unless otherwise agreed in writing, delivery of the Equipment will occur when the Equipment is placed at the disposal of the Customer at CVBS's premises. CVBS may agree to arrange carriage of the Equipment for the Customer, but it will do so as the agent of the Customer and delivery will be deemed to occur (and risk in the Equipment will pass to the Customer) when the equipment is placed at the disposal of the carrier. The Customer shall pay to CVBS its Charges for carriage incurred on the Customer's behalf.

5.3. Failure by the Customer to pay for any Charges when due shall entitle CVBS to withhold or delay delivery of any Equipment and/or Services subsequently ordered.

5.4. If CVBS determines that it is or may be unable to deliver the Equipment within a reasonable time or at all, CVBS may at its sole discretion terminate the Agreement in respect of that Equipment. In the event of termination under this clause 5.4, the Customer shall have no claim against CVBS for any damage, loss or expense whatsoever.

## **6. Acceptance**

6.1. Unless otherwise agreed in writing, Customer shall inspect the Goods or Services upon delivery and shall, if the Customer believes that the Goods or Services are not in accordance with the Customer's order, within 5 days of delivery give notice in writing to CVBS indicating why the Goods are not in accordance with the order. Time is of the essence in relation to this notice. If the Customer fails to give such notice the Goods or Services shall be deemed in all respects to be in accordance with the order and the Customer shall be deemed to have accepted the Goods or Services.



## 7. Warranties, Liability

7.1. Except as expressly provided to the contrary in this Agreement or the *Australian Consumer Law*, all terms, conditions, warranties, undertakings, inducements or representations, whether express, implied, statutory or otherwise relating in any way to Goods or Services provided by CVBS or to these terms and conditions, including without limitation relating to satisfactory quality, merchantable quality, or fitness for a particular purpose regarding the performance, non-performance or result of any Goods or Services are excluded.

Without limiting the generality of this clause 7.1, except as provided otherwise in the *Australian Consumer Law* CVBS shall not be under any liability to the Customer in respect of any loss or damage (including consequential loss or damage) howsoever caused which may be suffered or incurred or which may arise directly or indirectly in respect of any Goods or Services it provides or the failure or omission on the part of CVBS to comply with its obligations under these terms and conditions or at law, or any error in information supplied to the Customer.

7.2. Unless the consumer guarantees in the *Australian Consumer Law* apply, CVBS does not warrant that the Software (including any updates or new versions) is error free or that its use will be uninterrupted.

7.3. CVBS warrants to the customer that Goods delivered shall be subject to the same warranties under which they are supplied to CVBS, and that CVBS will do all things necessary to give the Customer the benefit of such warranties.

7.4. The warranty contained in clause 7.2 is subject to the following conditions: -

- a) A notice of complaint shall be sent by the Customer to CVBS within a reasonable time of the defect becoming known to the Customer, setting out the delivery date, such identification of the Goods or Services as CVBS may require and the nature of the complaint, and
- b) The reason for the relevant complaint must not have been caused by events (howsoever caused) after delivery.

7.5. Upon receipt of a complaint properly issued under clauses 7.2 and 7.3, CVBS shall review the complaint and if, in its reasonable opinion, a breach of warranty has occurred, CVBS shall provide replacement Goods or Services (as the case may be).

Save as provided in clause 7.5, CVBS's liability for breach of the warranty set out in clause 7.2 shall be limited in the manner set out in this clause 7.4.

7.6. Where any Act of Parliament implies in these terms and conditions any term, condition or warranty, and that Act avoids or prohibits provisions in a contract excluding or modifying the application or exercise of, or liability under such term, condition or warranty, such term, condition or warranty shall be deemed to be included in these terms and conditions. However, to the extent permitted under that Act, the liability of CVBS for any breach of such term, condition or warranty shall be limited at the option of CVBS to one or more of the following:

- a) the replacement of the Goods or the supply of equivalent Goods;
- b) the repair of the Goods, or resupply of the Services (as the case may be);
- c) the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or

d) the payment of the cost of having the Goods repaired or the Services supplied again (as the case may be).

7.7. The Customer shall keep CVBS indemnified in respect of all claims and demands against CVBS for any loss, injury, expense or damage arising howsoever (and including any claim or demand by a subsequent purchaser or consumer), whether or not arising from the default, negligence or conduct of CVBS or its representatives, in relation to Goods or Services provided by CVBS to the Customer.

7.8. Save as provided in this clause 7 (or required by law):

a) no liability is accepted by CVBS for any loss or damage caused directly or indirectly by any inaccuracy in any description of the Goods or Services provided to the Customer;

b) The Customer may not rely on the warranty if any loss or damage to the Equipment arises as a result of the Customer's negligence or failure to use or maintain the Equipment in accordance with the Manufacturer's recommendations.

7.9. CVBS expressly makes and/or gives NO WARRANTY, UNDERTAKING, INDUCEMENT OR REPRESENTATION that insofar as the functioning or operation of any aspect of any product relies upon, incorporates or otherwise utilises a date code:

a) the product has been specifically designed or adapted to accommodate and implement the transition from the twentieth century to the twenty-first century and all leap year calculations;

b) a date occurring after 31 December 1999 shall be capable of being read and processed; or

c) where any step or process take account of the difference between two-year numbers, the product is able to accurately compute such difference where one of those dates occurs in the twenty-first century and the other date occurs in the twentieth century.

## 8. Risk and Title

8.1. Risk of damage to or loss of all Goods shall pass to the Customer on delivery or, if the Customer fails to take delivery, when CVBS tenders' delivery. At such time, the Customer shall assume all risk and liability for the Goods, and for their use and storage.

8.2. No legal or equitable title to the Goods shall pass to the Customer until CVBS has received cleared funds from the Customer in full payment for all Goods and/or Services which are the subject of the relevant order and all Goods and/or Services previously supplied by CVBS to the Customer.

8.3. Until the legal and equitable title to the Goods passes to the Customer, the Customer shall: -

a) hold the Goods as bailee of CVBS;

b) store the Goods in such a manner as enables them to be readily identified and distinguished from all other Goods held by the Customer and where such other Goods include similar Goods previously supplied by CVBS to the Customer and in respect of which title has passed to the Customer then the Customer shall mark the Goods in respect of which title has not passed in an



indelible and legible manner which enable the Goods to be readily identified as Goods held as bailee for CVBS;

c) upon demand by CVBS, deliver up the Goods forthwith to CVBS;

d) allow (and the Customer hereby authorises) CVBS to enter upon the premises where the Goods are stored for the purpose of taking possession thereof; and

e) The Customer shall be liable for any damages and/or costs arising from or in connection with the recovery of possession of the Equipment by CVBS.

8.4. The rights contained in this clause 8 are without prejudice to CVBS's other rights and remedies. Any period of credit may be terminated by CVBS by notice in writing and thereupon any amounts unpaid shall be immediately due and payable to CVBS.

Notwithstanding any other provision of this agreement, where any part of the Invoice price of the Goods is due and payable, CVBS may at its option elect to take any action to recover the unpaid Invoice price as a liquidated sum. Any failure of CVBS to so elect shall not be construed as a waiver of its right to make a later election to recover any unpaid Invoice price.

8.5. No title to any Software or embedded Software is transferred to the Customer at any time.

8.6. Pending full title to the Equipment passing to the Customer, the Customer will not purport to assign any right or interest therein to any other person other than by sale of the Equipment in the usual course of business (upon which title will pass to the purchaser).

## **9. Guarantee**

9.1. The Customer shall, if required by CVBS, arrange for its liability to CVBS to be guaranteed by a bank or other third persons. This request may be imposed by CVBS at any time.

## **10. Termination**

10.1. Notwithstanding that the Customer has no right to require CVBS to provide Goods or Services to it until CVBS has agreed in writing to do so, CVBS may upon the occurrence of any of the events set out in clause 4.3 decline to consider any further orders made by the Customer and CVBS shall have the right forthwith to withhold delivery of Goods or Services subject to a pending order, and terminate this Agreement without prejudice to any claim or right CVBS may otherwise make or exercise. This Agreement shall terminate automatically upon the occurrence of any of the events set out in clause 4.3 (b) or (c).

10.2. In particular, and without prejudice to the generality of the foregoing, CVBS shall, upon termination (in addition to all other rights vested in it), be entitled to retake possessions of all and any Goods supplied in respect of which payment in full has not been received by CVBS.

## **11. General**

11.1. Any indulgence, latitude or extension of time which either party may show towards the other party in relation to any of the provisions of the Agreement or any matter or thing relating to it or arising from it shall not in any way prejudice or interfere with the first party's rights under the Agreement and shall not be claimed to constitute a waiver of it.

11.2. The Agreement shall be governed by the laws of Victoria and the parties agree to submit to the exclusive jurisdiction of the courts of that State.

11.3. The relationship between CVBS and the Customer shall not be that of principal and agent, nor that of partners, nor fiduciary, but that of seller and buyer and neither party shall, nor has power or authority to, conclude any contract or agreement or make any commitment, representation or warranty which binds the other or otherwise act in the name of or on behalf of the other.

11.4. If any provision of this Agreement is held by any court or other competent authority to be void or unenforceable in whole or in part, the validity and enforceability of the remaining provisions shall not be affected.

11.5. The Customer must not, whether voluntarily, involuntarily or by operation of law, assign or license, or attempt to assign or license, any of its rights or obligations under this Agreement without the prior written consent of CVBS. No such assignment by the Customer howsoever occurring shall relieve the assignor of its obligations hereunder. For the purpose of this clause, "assignment" includes any disposal, including by way of mortgage or other security.

11.6. Any notice to be given pursuant to this Agreement must be in writing signed by the party giving it and may be served by hand or by sending it by facsimile, pre-paid recorded delivery or registered post to the address of the relevant party specified in this Agreement (or as otherwise notified from time to time). Notice will be deemed received on the second business day following dispatch, except in the case of a facsimile transmission, which will be deemed received upon dispatch, subject to a transmission report, issued by the sender's machine, being made available and showing evidence of successful transmission.

## **12. Force Majeure**

12.1. CVBS will not be liable for any loss or damage suffered by the Customer due to any delay or any breach or default under the Agreement in circumstances where such delay, breach or default results from causes beyond CVBS's reasonable control including but not limited to any breach or default under the Agreement by the Customer, the imposition of any laws, regulations, orders, acts, instructions or priority requests of governments, acts of god, fires, floods, weather, strikes, lockouts, factory shut down or embargoes, wars, riots, delay or shortage in transportation or inability to obtain labour, manufacturing materials or other materials from CVBS's or the Manufacturer's usual sources.

12.2. Any delay resulting from a cause set out in clause 12.1 shall immediately extend the date for performance by CVBS of any obligations under the Agreement by the period of delay.

### **13. Customer Obligations and Acknowledgments**

13.1. It is a condition of this Agreement that the Customer provide CVBS and all of its staff (including contractors) with sufficient information, network administration rights, access to premises, equipment and the Customer's staff, and all other assistance necessary for CVBS to perform its obligations under this Agreement.

13.2. The Customer by accepting these terms and conditions of engagement warrants to CVBS that:

- a) it owns, or is licensed to use, all computer systems, software and equipment on or to which it has instructed CVBS to install or connect Goods or perform Services;
- b) all information supplied to CVBS by or on behalf of the Customer relating to computer systems, their origins, constituent hardware and software is true and correct;
- c) it is entitled itself to enter into this Agreement and, to the extent that the consent of any third party is required (by CVBS or otherwise) to be obtained to the execution of this Agreement or the provision of Goods and/or Services in accordance with its terms, that the Customer has requested and obtained all such consents in an unqualified, unconditional and absolute manner; and
- d) the Customer will indemnify and keep indemnified CVBS and its associated entities and persons against any liability they or any of them may suffer or incur as a consequence of a breach of any of the warranties contained in clauses 13.2(a), (b) or (c).

### **14. Intellectual Property**

14.1. The Customer acknowledges that all intellectual property (whether registered or not), including copyright, trademarks, designs, patents, circuit layouts, know-how and intangible assets or intellectual capital of any kind, contained in or on Goods provided by CVBS, or in or on equipment or materials used by CVBS in providing the Services, under this Agreement, is owned by, or licensed to, CVBS. The Customer obtains no right, title or interest in such property, unless the parties agree otherwise in writing, save to the extent that a licence is necessary to enable the Customer to obtain the benefit of the Goods and/or Services as contemplated by this Agreement.

14.2. The Customer will not do anything to prejudice any of the intellectual property rights of CVBS or any third party and will immediately advise CVBS if it becomes aware of any actual, likely or threatened infringement of CVBS's intellectual property rights.

14.3. The Customer indemnifies, and will keep indemnified, CVBS and all of its officers, employees, agents and contractors against all loss, damage, costs and expenses they may incur directly or indirectly as a result of any act or omission by the Customer, including but not limited to any breach of this Agreement (other than where the relevant act or omission constitutes a right or obligation expressly conferred or imposed on the Customer under this Agreement or otherwise agreed in writing by CVBS).

## 15. Indemnity

15.1. The Customer indemnifies, and will keep indemnified, CVBS and all of its officers, employees, agents and contractors against all loss, damage, costs and expenses they may incur directly or indirectly as a result of any act or omission by the Customer, including but not limited to any breach of this Agreement (other than where the relevant act or omission constitutes a right or obligation expressly conferred or imposed on the Customer under this Agreement or otherwise agreed in writing by CVBS).

## 16. Severance

16.1 These terms and conditions are to be read subject to the *Australian Consumer Law*.

16.2 If the *Australian Consumer Law* applies to these terms and conditions, any provision of these terms and conditions which by reason of the *Australian Consumer Law* is void or unenforceable, that provision must, to that the extent it is void or unenforceable, be treated as deleted from these terms and conditions. This does not affect the validity or enforceability of the remainder of the provision or any other provision of these terms and conditions.