

Terms and Conditions CQMS RAZER PTY LTD & related bodies Corporate

11 September 2024

CQMS RAZER PTY LTD & related bodies Corporate STANDARD TERMS AND CONDITIONS OF SALE

1. GENERAL

(a) These Terms and Conditions (**Agreement**) apply to products (**Products**), and to services (**Services**), **CQMS RAZER PTY LTD & related bodies Corporate (us, our and we) “Seller”** supply to the “Customer purchaser (**you**).

(b) Nothing in this Agreement (including clauses 6, 7 and 8) affects any non- excludable statutory rights or remedies that you may have.

2. PRICE AND TAXES

(a) The prices in relation to the Products and/or Services do not include taxes. You must pay all taxes arising from or relating to this Agreement. Taxes mean all taxes of any kind (including stamp duties) other than taxes on our income.

(b) Without limiting clause (a), you must pay to us an amount equal to any goods or services tax that applies to a supply. We will provide you with a tax invoice.

3. DELIVERY AND CHANGES

(a) We will provide the Products and Services by the dates agreed in writing with you.

(b) You must inspect Products on delivery and notify us of any short delivery or transport damage within 5 days after receiving the delivery. Notification does not make us liable for short delivery or damage or oblige us to provide additional or replacement Products.

(c) We will be entitled to an extension of time to the delivery/completion date of the Products and Services for delays due to:

(i) any act or omission of you, your employees, Agents, other contractors or any third party;

(ii) any event of force majeure as set out in clause 9;

(iii) any variation:

(iv) any direction to suspend delivery of the Products or the performance of the Services by you; or

(v) any other reason beyond our reasonable control.

(d) You cannot cancel or change an order for a Product or a Service (including, to avoid doubt a delivery date or any specifications or requirements) without our prior written consent.

4. PAYMENT TERMS

(a) Customers may have an account with **CQMS RAZER PTY LTD & related bodies Corporate (Account Customers)** or may purchase Products and Services individually (**Non- Account Customers**).

(b) Unless otherwise agreed payment is due before delivery of the Product or on completion of the Services.

(c) Without limiting any other right or remedy, we may charge you daily interest, at the Reserve Bank of Australia standard interest rate, compounding monthly, on overdue amounts. If we charge

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interest, then you must pay it within 7 days after we request payment.

(d) We may set-off and deduct from any amount payable to you the amount of any claim that we have against you or any sum which is or will become payable by you, whether under this Agreement or otherwise.

5. TITLE AND RISK, INSURANCE & REPOSSESSION

(a) Title to a Product only passes to you when we have been paid in full. Prior to that you are a bailee only and you do not obtain any form of interest in the Product (whether legal, equitable or otherwise). Risk in a Product passes to you when we provide it to a carrier, deliver it to a place you nominate or receive payment in full (whichever occurs first). We do not have to give any form of notice that risk or title has passed.

(b) We are not required to have any insurance for Products or Services (including transit, theft liability or damage insurance).

(c) If you have a Product and title has not passed to you, then:

(i) you must store the Product separately and ensure that it is clearly marked as our property: and

(ii) you irrevocably authorise us to enter any premises and take possession of and remove the Products if you are (or are about to become) insolvent or subject to any form of administration or insolvency process of any kind (whether voluntary or involuntary). To avoid doubt doing any of these things does not affect your liability under this Agreement (including your liability if a Product is lost damaged or stolen or seized).

(d) To avoid doubt doing any of the things under clause 5(c)(i) or 5(c)(ii) does not affect your liability under this Agreement (including your liability if a Product is lost, damaged, stolen or seized).

6. REFUNDS, EXCHANGES AND RETURNS

Unless otherwise agreed in writing, we do not provide refunds, or exchange or accept the return of Products.

7. WARRANTY

The Seller warrants the goods provided pursuant to this order will conform to the Seller's written specifications in all material respects and warrants parts against failure due to defects in material or workmanship as follows:

(a) Machine parts (dragline buckets and mobile bucket lips): a period of twelve (12) months after the date of commissioning of each product but no longer than 24 months after date of purchase, Pursuant to Warranty Certificate.

(b) Wear parts, consumables, GET, dragline rigging and rebuilt products: limited to defects in material and workmanship at time of installation, but not to exceed twelve (12) months from shipment exworks.

(c) Notwithstanding the above, parts not manufactured by the Seller which are separately warranted by their respective manufacturers are not warranted by the Seller and the Seller shall assign to the Customer whatever rights the Seller obtains under any such warranties. Seller warrants that services provided hereunder shall conform in all material respects to the description of the services set forth in the order and will be performed in a workmanlike manner.

(d) In the case of repairs, rebuilds or alterations to goods undertaken by the Seller under warranty or not, the abovementioned warranty periods will only apply from the date of such repair, rebuild or alteration to the parts replaced and not to the goods as a whole nor to any of the existing parts.

(e) Technology and Software products: A twelve (12) month warranty on parts and labour is applicable, except where otherwise stated. For battery powered devices and sensors, the warranty period is limited to three (3) months commencing on the stated Activate By date listed on the product unit, except where otherwise stated. The warranty commences on the date of Delivery and is only applicable to the original purchaser of the Product. The warranty does not include packing materials, software, manuals, cables, cable

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harnesses, accessories or parts (such as processor, memory module, hard disk drive, solid state drive, expansion cards, mounting brackets or protective films) modified or added to the Product after Delivery. The warranty covers any failure that occurs, during the applicable warranty period, due to defects in the original materials or workmanship. The warranty does not cover any damage that results from: negligence; improper handling; misuse; unauthorised or attempted repairs; accidents; natural disasters or electrical storms; power surges or spikes; modification in any way; incorrect operating environment; incorrect electrical supply or input voltage; overheating as a result of inadequate ventilation or an environment with high dust levels for non Ingress Protection-rated products. Defaced, covered, damaged or missing serial number and bar-code labels void the warranty. To claim under this warranty, the Purchaser must return the Product, at their expense, accompanied by proof of purchase (if requested) to Seller. Seller takes no responsibility for any loss or damage that may occur in transit. Evaluation of Product(s) will be scheduled according to the normal work flow of the servicing location, within 5 working days of the date of receipt of the Product(s). Prior to returning any Product for repair, all data stored in the Product should be backed up and all removable media should be removed. Seller does not accept any liability for data or software that is lost, corrupted, deleted or altered during repair or loss of or damage to any removeable parts or parts (including storage devices) added to the Product.

WARRANTY ADMINISTRATION

Warranty claims must be sent to the Seller, Attention, Product Manager, within thirty (30) days of the failure due to defect. The Seller's obligation on warranty claims and the Customer's remedy thereof shall be exclusively limited, at the Seller's option, to one of the following: (i) replacing ex-works any part proved to be defective, or (ii) remedying or repairing such defect. The Seller's liability in respect of any replacement part supplied in terms of a warranty claim shall terminate on the expiry of the initial contractual warranty period as set out in clause 7. The Seller has the option of requiring the return of the alleged defective part, transportation charges prepaid by the Customer, before recognising any claim. In the event such claim is recognized, the Seller shall reimburse the Customer for such charges and the Seller shall bear the expenses it incurred in investigating the claim. If the claim is not recognised, the Customer shall reimburse the Seller for the Seller's expenses in investigating the claim and where the Seller has already supplied a replacement part or undertaken a repair, the Seller shall be entitled to invoice the Customer for the costs thereof. The Customer's remedy for warranty clauses shall be exclusively limited to remedying or repairing such defect, provided that the Seller is given written notice of such claimed defect within 7 days of the performance of the service.

WARRANTY DISCLAIMERS

Other than set forth above and subject to any legislation which cannot be disavowed by agreement between the Seller and the Customer, the Seller specifically disclaims any express or implied warranties including, but not limited to, any warranties of merchantability and/or fitness for a particular purpose of the Goods provided pursuant to this order. No allowances will be made for repairs or alterations undertaken without the Seller's prior written consent. If parts which are not manufactured or recommended by the Seller are used in replacement without the Seller's written consent or if the part or machine in which it is installed is subjected to misuse, abuse, negligence or accident or if the parts are not properly stored, maintained or installed and if the Seller determines that any of the foregoing adversely affects the parts, then all warranties on parts or components so affected are void. The Seller shall in no event be liable for incidental, special or consequential damages (including loss of production and profits), nor shall any recovery of any kind against the Seller be greater in amount than the purchase price of the specific part(s) of the machine which caused the alleged loss, damage or injury. The Seller shall not be liable for the cost of dismantling or installing replacement parts.

8. LIABILITY

To the maximum extent permitted by law:

- (a) we exclude all implied terms (statutory or otherwise - including implied warranties) of any kind:
- (b) neither party shall be liable for indirect and consequential loss or damage howsoever arising out of,

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related to or in connection with this Agreement. Such exclusion will apply in contract, tort and otherwise at law irrespective of cause and notwithstanding the negligence or breach of duty of us or any other party. Consequential loss or damage means loss of revenue, loss of profit, loss of product or production, business interruption, loss of business opportunity, loss of savings, failure to realise expected profits, loss of goodwill, downtime and other like risks in each case whether direct or indirect and whether or not foreseeable at the date of execution of this Agreement or at any time:

(c) notwithstanding any other provision to the contrary in this Agreement, the maximum liability of each party to the other party for loss or damage howsoever arising out of, related to or in connection with the performance or non-performance of this Agreement, whether in contract, tort or otherwise at law irrespective of cause and notwithstanding any negligence or breach of duty, shall be limited in aggregate for any and all claims:

(i) arising from or relating to a Product: to the price of the Product and

(ii) arising from or relating to a Service: to the price of the Service.

(d) the liability of each party to the other is reduced to the extent that it was caused or contributed to by an act or omission by the other party or by any of its personnel, employees, or agents (including subcontractors):

(e) clauses (a) - (d) apply to loss or damage of any kind (direct indirect or otherwise), however caused, whether in contract tort (including negligence), under any statute or otherwise, arising from or related in any way to this Agreement (including arising from or related in any way to the Products or the Services): and

(f) if a statute implies a term into this Agreement and it cannot be excluded, then our liability for breaching it will be limited (at our sole and unfettered option) to:

(i) for Products: repair, replacement with equivalents or paying the cost of such repair or replacement and

(ii) for Services: resupply or paying the cost of resupply. We may choose not to limit our liability in any of these ways.

9. FORCE MAJEURE

Neither party will be in breach of this Agreement if the breach is caused by an event beyond that party's reasonable control. Without limitation, the following are taken to be events beyond a party's reasonable control: any form of industrial action, health pandemics, Riots, acts of war or terrorism, Fires, Floods, Storms, Breakdowns, natural disasters, Acts of God, Scarcity, unavailability or delay in obtaining transportation or materials (including deliveries from subcontractors), power restrictions, changes to laws, and all circumstances beyond our reasonable control, whether any of these things affect that party, its suppliers or its Related Bodies Corporate) and whether they occur within or outside Australia, **Related Bodies Corporate** has the meaning given to that term in the *Corporations Act 2001* (Cth).

10. CONFIDENTIAL INFORMATION & INTELLECTUAL PROPERTY

(a) **Confidential Information** means any information that concerns the business. Finances, Technology, Processes, know-how, customers or suppliers of a disclosing party and is disclosed to or acquired by the receiving party and which:

(i) is by its nature confidential: or

(ii) is designated by the disclosing party as confidential: or

(iii) the receiving party knows or ought to know is confidential. But does not include information which:

(iv) is or becomes public knowledge other than by a breach of this Agreement or

(v) is in the possession of the receiving party without restriction in relation to disclosure on or before the date on which it is disclosed to or acquired by the receiving party: or

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- (vi) has been independently developed or acquired by the receiving party, where the burden of establishing any of the exceptions referred to in clause 10 (a)(iv)-(vi) will be on the receiving party.
- (b) A party must keep the other party's Confidential Information confidential and must ensure that the Confidential Information is not disclosed to any person other than:
- (i) to a Related Body Corporate of the receiving party: or
 - (ii) to the extent required, to a court of law, stock exchange, government department or regulatory authority having jurisdiction over the receiving party or pursuant to any necessarily applicable legislation or regulation: or
 - (iii) to the extent that disclosure must be made to legal advisers, auditors or other consultants who need to know the Confidential Information solely for the purposes of this Agreement or
 - (iv) to any other person to whom the disclosing party has agreed in writing that the Confidential Information may be disclosed.
- (c) The receiving party must notify the disclosing party of any such requirement as soon as it becomes aware of it and must assist the disclosing party in any reasonable action that the disclosing party requires the receiving party to take to limit the required disclosure (or any use or further disclosure) of the Confidential Information.
- (d) Prior to disclosing any Confidential Information of the disclosing party to a third party, the receiving party must:
- (i) make the third party aware that the information is the Confidential Information of the disclosing party: and
 - (ii) unless prohibited by law, obtain the third party's agreement that it will only use or disclose the Confidential Information solely as set out in this clause.
 - (iii) All patents, design rights, trademarks, trade names, symbols, copyright, original works, design, specification, process, method of working or other information relating to the Product (other than that provided by the Customer to the Seller) is the exclusive property of the Seller at all times. Subject to this, the Seller grants to the Customer an irrevocable licence to use the Products, and in the case of Software and Data Services, use is granted as per respective Licence(s) at our [software license terms and conditions](#).
- (e) Intellectual Property Rights means all intellectual property rights, Including, without limitation, Copyright, moral rights, trademarks (whether registered, registrable or not). Patents, designs (whether registered, registrable or not), circuit layout rights, Inventions, work methods, trade secrets and any other analogous rights, Including, without limitation, the right to have Confidential Information kept confidential.
- (f) All Intellectual Property Rights created by us for the purposes of this Agreement shall remain vested in us at all times. Nothing in this Agreement contemplates or effects an assignment of Intellectual Property Rights or any legal or equitable interest in the Intellectual Property Rights to you whether those Intellectual Property Rights were or will be created for the purposes of this Agreement or otherwise.
- (g) Subject to clause 1o(f), we grant to you a royalty free, non-exclusive, non-transferable, non-sublicensable, personal license for the term of this Agreement to any Intellectual Property Rights for the limited purpose of performing your obligations under this Agreement.
- (h) Without limiting clause 1o(g), you must not use (or allow anyone else, including a service provider, to use) any of our Intellectual Property Rights to: (i) work on any of our products (including to perform maintenance) other than where the work is permitted by clause 1o(i) below; or (ii) create a document (including a maintenance schedule or a repair manual).
- (i) You may use documents that we provide with a Product to perform maintenance or repair work

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on that Product.

11. CUSTOMER TERMS

None of your terms will apply to or affect this Agreement in any way. This applies even if we provide goods or services, accept an order, or accept payment.

12. PPSA

(a) You acknowledge and agree that:

(i) this Agreement is a security agreement, and creates a purchase money security interest in our favour (**Security Interest**), in accordance with the Personal Property Securities Act 2009 (Cth) (**PPSA**):

(ii) value has been given to you for the Security Interest or you have done an act by which it has arisen:

(iii) we may register a financing statement for the Security Interest

(iv) you waive your right to receive a registration event notice;

(v) the collateral is a class ("Other Goods" (non inventory, commercial property) comprising all goods supplied under this Agreement and

(vi) PPSA Sections 95, 130, 132(3)(d), 132(4), 135 and 143 will not apply.

(b) You:

(i) must not do (or fail to do) anything which could (or does) interfere with (or affect) a Security Interest of ours (including a right to enforce or register one);

(ii) must assist us in registering, Perfecting, enforcing or otherwise dealing with a security interest of ours or any of our other rights: and

(iii) must (if you breach this clause 12(b) comply with our instructions as to the treatment of any goods provided under this Agreement (including procuring access to third party premises).

(c) Each of clauses 12(a)(i)-(vi) and 12(b)(i)-(iii) are severable without affecting the others in any way. This clause 12 does not affect any other security interests or limit our rights or remedies under the PPSA.

(d) You must meet all of your obligations under this clause 12 solely at your own cost.

13. DISPUTE RESOLUTION

(a) In the event of any difference or dispute (**Dispute**) between the parties concerning or arising out of this Agreement the party initiating the dispute must give the other party notice setting out the nature of the dispute and available dates to meet to resolve the dispute.

(b) Notwithstanding the existence of a Dispute, each party will continue to perform its obligations under this Agreement.

(c) Senior representatives of the parties must meet to attempt to resolve the Dispute in good faith prior to the commencement of any proceedings.

(d) Either party may commence legal proceedings in relation to the Dispute, or refer the Dispute to arbitration if:

(i) the parties fail to resolve the Dispute within 30 days of the first meeting of the senior representatives of the parties:

(ii) the parties fail to agree on a meeting within 14 days after receiving notice of the Dispute: or

(iii) a party fails to attend a scheduled meeting.

(e) In the event of a dispute of a payment claim, you are obliged to pay the undisputed amounts in accordance with the payment terms of this Agreement and you are only not obliged to pay amounts which are the subject of a genuine dispute.

(f) Nothing in this clause 13 prevents a party from commencing proceedings to seek injunctive or urgent declaratory relief for a dispute or any other matter arising under this Agreement.

14. COMPLETE AGREEMENT & THIRD PARTY RIGHTS

(a) This is the entire agreement between the parties in relation to its subject matter and supersedes all

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prior agreements, Arrangements, correspondence and discussions of any kind relating to its subject matter. This Agreement may only be varied by written agreement.

(b) This Agreement does not confer any rights or benefits upon any third parties and any such rights or benefits are excluded. To avoid doubt this exclusion applies to rights or benefits of any kind, however arising, including under any form of third party beneficiary law.

15. TRADE COMPLIANCE

(a) You represent and covenant (on an on-going basis) that neither you, nor any of your subsidiaries (nor, to your knowledge, any director, officer of you or any of your subsidiaries) is an entity that is, or is owned or controlled by a person or entity that is, expressly targeted by any economic or financial sanctions or trade embargoes implemented, administered or enforced by the United Nations Security Council, the European Union, any Member State of the European Union, the United Kingdom or the United States of America (collectively, "Sanctions"), or is located, organized or resident in a country or territory that is, or whose government is, targeted by country- wide or territory-wide Sanctions (being, currently at the time of this Agreement Cuba, Iran, North Korea, Syria and Crimea).

(b) You undertake:

(i) to comply with all Sanctions and export controls that are applicable to you and your business:

(ii) not to sell, supply or transfer any goods supplied by us under this Agreement to any third party recipient or to engage in any other activity, that would result in a violation of applicable Sanctions or export controls by any person:

(iii) to inform us without delay in the event that you become aware of any event or matter that would or that might result in a violation of applicable Sanctions or export controls by you or us: and

(iv) to indemnify and hold us harmless from and against any loss, Liability, Claim, Proceeding, Action, Fine, cost and damages of whatever nature that we or any entities under the control of CQMS Razer Pty Ltd may incur or sustain by reason of you being in breach of the representations, covenants and undertakings given by you in this Agreement.

(c) Notwithstanding anything to the contrary in this Agreement we have the right to terminate this Agreement with immediate effect and without any liability towards you in the event that we (acting reasonably) consider your actions or non actions would or might result in a violation of applicable Sanctions or export controls by any person or entity.

16. MODERN SLAVERY

(a) You undertake to us that as at the date of this Agreement and throughout the Term of this Agreement:

(1) you will ensure that your officers and employees, related entities, Subcontractors, Suppliers, contractors or other persons relevant to this Agreement ("**Personnel**") comply with the Anti-Slavery Laws:

(2) you will comply, and ensure that your Personnel comply with all of statutory obligations in relation to Anti-Slavery Laws:

(3) you and your Personnel:

(i) have not been convicted of any offence involving Modern Slavery: or

(ii) have not been the subject of any formal complaint investigation, inquiry or enforcement proceedings by any person or regulatory body in connection with Modern Slavery or Anti-Slavery Laws.

(b) You must notify us as soon as you become aware of any actual or suspected breach of the Anti-Slavery Laws or Modern Slavery by you or any of your Personnel.

(c) You must give us all information requested by us to report on, or comply with, any Anti-Slavery Laws in force from time to time, promptly after a request by us to do so.

For the purposes of this clause 16 the following definitions will apply:

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Anti-Slavery Laws means:

Division 270 and 271 of the *Criminal Code Act 1995* (Cth); the Modern Slavery Act 2018 (Cth); and

all other applicable laws, Statutes, Regulations, codes or other instruments relating to Modern Slavery in force from time to time relating to this Agreement.

Modern Slavery means any exploitation of a worker, human trafficking, Slavery, slavery-like behavior, Servitude, forced labour, child labour, debt, bondage or deceptive recruiting for labour or services or similar behavior, and as referenced in Anti-Slavery Laws, **17. NO RE-EXPORT TO RUSSIA**

(a) You shall not sell, export or re-export directly or indirectly, to the Russian Federation or for use in the Russian Federation any goods supplied under or in connection with this Agreement that fall under the scope of Article 12g of Council Regulation (EU) No 833/2014.

(b) You shall undertake your best efforts to ensure that the purpose of clause 17(a) is not frustrated by any third parties further down the commercial chain, including by resellers.

(c) You shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by resellers, that would frustrate the purpose of clause 17(a).

(d) Any violation of clauses 17(a), (b) or (c) shall constitute a material breach of an essential element of this Agreement and we shall be entitled to seek appropriate remedies, Including, but not limited to termination of this Agreement.

(e) You shall immediately inform us about any problems in applying clauses 17(a), (b) or (c), including any relevant activities by third parties of which you become aware that is likely to frustrate the purpose of clause 17(a). You shall make available to us information concerning compliance with the obligations under clauses 17(a), (b) and (c) within two weeks of the simple request of such information.

(f) You indemnify us from and against any loss, Liability, Claim, Proceeding, Action, Fine, cost and damages whatever nature that we or entities under the control of **CQMS RAZER PTY LTD & related bodies Corporate** may incur or sustain by reason of you being in breach of the provisions of this clause 17.

18. ASSIGNMENT AND GOVERNING LAW

(a) You may not deal with (including, to avoid doubt assign) any of your rights or obligations under this Agreement without our prior written consent and any dealing without that prior written consent is void and of no effect.

(b) We may at any time assign or novate or otherwise transfer all or any part of our rights or liabilities under this Agreement to our Related Bodies Corporate

(c) This Agreement is governed and determined in accord with the law of the State or Territory of Australia in which the Seller or that division of the Seller (as set out on the Seller's invoice) making this sale is located. The parties submit to the courts of that State or Territory, COMPLIANCE WITH REGULATIONS. The Seller shall provide the Goods in accordance with the Seller's good faith interpretation of applicable codes and regulations in effect at the time of manufacture. However, due to periodic changes in and varying interpretations of such codes and regulations, the Seller makes no representations that the Goods comply with all laws, codes, regulations and standards. The Seller shall, at the Customer's request and expense, make any reasonable modifications to the Goods which are required in order for the Goods to comply with any codes and/or regulations.

19. MISCELLANEOUS

(a) A notice, consent or other communication required or permitted to be given under this Agreement shall be in writing and may be given or served by:

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- (i) delivering the notice by hand at that other party-s address for service:
- (ii) sending the notice by certified mail to the other party-s address for service:
- (iii) sending the notice by email to the email address of the addressee.
- (b) Any provision of this Agreement which is invalid in any jurisdiction must in relation to that jurisdiction:
 - (i) be read down to the minimum extent necessary to achieve its validity, if applicable: and
 - (ii) be severed from this Agreement in any other case.without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction.
- (c) We are an independent contractor in relation to you and no other relationship applies (including, for the avoidance of doubt any employment trust partnership, joint venture or agency). Neither party authorises the other to act on its behalf (whether as an agent or otherwise) or to bind it any way. A party must not in any way (whether expressly or impliedly) bind the other party or enter into any agreements or make any commitments or representations on behalf of the other party.

20. Privacy Policy

[CR Privacy Policy](#) is committed to providing quality services to you, and this policy outlines our ongoing obligations of how we manage your Personal Information. This Policy may change from time to time and is available on our website.