

Terms and Conditions



Company Number 7285957 NZBN 942 904 728 8225

ACA PACIFIC PTY LIMITED
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New Zealand

RESELLERS AND CHANNEL PARTNERS

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ACA Pacific Pty Limited, an Australian company with its principal place of business at C1, 18 Triton Drive Rosedale, Auckland City 0632 ("ACA"), and the reseller or dealer (the "Reseller"). This reseller agreement outlines the key points of the business relationship that will exist between ACA and the Reseller in the process of the resale of any and all hardware, software, service and support (collectively, "Products") as provided by ACA, and suppliers of ACA (the "Vendors").

1. Acceptance and Additional Terms

Signing the ACA Pacific Reseller Application indicates the Reseller's acceptance and understanding of these terms and conditions and forms the agreement ("Agreement"). At all times during the relationship, terms and conditions outlined in the following documents apply and must be observed:

- (i) ACA Pacific Terms and Conditions
- (ii) ACA Pacific Return and Refund Policy

Any Additional Terms attached to the ACA Pacific Reseller Application form part of the Agreement and may override this Agreement and any above stated document. Additional Terms may be stipulated by ACA only, any such terms stipulated by the Reseller are null and void. The person signing the ACA Pacific Reseller Application is deemed to have the authority to purchase on behalf of the Reseller.

2. Agreement Term and Termination

The Agreement shall commence on the date the ACA Pacific Reseller Application is signed by both the Reseller and an authorised ACA representative and remains in effect until a mutually agreed termination date if so desired by either party, unless earlier terminated as set forth herein. ACA or the Reseller must give not less than thirty (30) days written notice of intent to terminate the Agreement. ACA may, at its option, terminate the Agreement immediately without notice if:

- (i) the Reseller fails to comply with any terms and conditions of the Agreement or
- (ii) ACA are acquired by or merged with another business, entity or person.

Upon termination of the Agreement for any reason:

- (i) the Reseller must immediately cease further distribution of Products
- (ii) the Reseller must settle all outstanding amounts owed to ACA within the period specified for the Reseller's account terms and
- (iii) all current Evaluation Agreements will be terminated, and the Reseller must immediately return to ACA any Products and all related materials, accessories, packaging and documentation on loan for evaluation purposes.

The obligation of confidentiality as set forth in this Agreement shall remain in effect notwithstanding any termination of this Agreement.

3. Vendor Products and Terms

ACA offers Products for resale, sourced from Vendors, both from within New Zealand and internationally. This agreement applies to any and all such Products offered by ACA current as at the time the Agreement is signed and for the duration of the term of the Agreement. The Reseller must be aware that in addition to this Agreement

- (i) the Vendor may provide further terms, conditions and require formal agreements (Vendor Terms) in order for the Reseller to become eligible to sell some or all of the Vendor's Products and/or purchase at a particular level of pricing, and
- (ii) that while such Vendor Terms may be provided by ACA upon request, that it is ultimately the Reseller's responsibility to be aware of, source, and agree to them.

4. End Users

The entities and persons to which the Reseller sells the Products, and the entities and persons by whom the Products will be used and/or registered to either as a result of sale or under evaluation, will be referred to as the “End User”. End User information is often required during the sales process to validate eligibility for service and support, upgrades, special discounts, and as registration information for purchased Products. End Users may also be required to agree to Vendor Terms.

5. Territory

ACA holds specific distribution agreements with Vendors that specify what geographical areas into which Products may be sold. The Reseller may assume eligibility to sell to an End User located anywhere within Australian states and territories. In addition, the Reseller may sell Products to an End User registered as an Australian business or entity where the site the Products will be used are outside of New Zealand, on the condition that delivery of the Products is not prohibited under any law. In cases where the End User is not an Australian registered business or entity and is located outside of New Zealand, such eligibility will be determined on a case by case basis according to conditions set forth by the Vendor.

6. Reseller’s Rights

- (i) The Reseller is authorised to on-sell and market Products offered by ACA on behalf of its Vendors, subject to Vendor Terms and Territory agreed herein.
- (ii) For each Vendor the Reseller will be assigned a ‘Partner Level’ according to ACA and Vendor selection criteria, and subject to any required Vendor Terms.
- (iii) Pricing for each Vendor, specific to the Reseller’s nominated Partner Level, will be available upon request (subject to ACA pricing policies).
- (iv) The Reseller has no minimum inventory or volume commitments, other than those stipulated per item as a minimum order quantity, or by the Vendor as part of the Vendor Terms.
- (v) The Reseller will be eligible for Demonstration, Not-For-Resale and Evaluation Products. Such Products may be provided at heavily discounted prices and are subject to special terms, conditions and limitations on usage.

7. Reseller’s Obligations

- (i) The Reseller will distribute any Products only as packaged by ACA in accordance with this Agreement, with all vendor packaging, warranties, disclaimers and End User License Agreements intact.
- (ii) The Reseller will notify all End Users, in writing:
 - i. of any Vendor Terms applicable to use of the Vendor’s Products, as provided or made available by ACA or the Vendor, and
 - ii. that the offer of sale and use of the Vendor’s Products is subject to the End User’s agreement to the Vendor Terms.
- (iii) The Reseller will be responsible for confirming that resale, delivery and use of Vendor Products is not prohibited under any applicable laws in the Vendor’s, Reseller’s and End User’s countries.
- (iv) The Reseller’s personnel will become and remain adequately informed and trained in relation to the sale, usage and Vendor Terms of all Vendor Products that they offer to End Users.
- (v) The Reseller will be bound by marketing guidelines as set forth in advice by ACA and in Vendor Terms.
- (vi) The Reseller will not make any warranties or representations in relation to Products or on behalf of a Vendor without written evidence or permission.
- (vii) The Reseller will provide End User details upon request for quotations and purchase orders.
- (viii) The Reseller hereby agrees that in relation to sales leads provided by ACA, Products will be purchased from ACA as a preferred supplier, with bias for ACA over other suppliers.
- (ix) The Reseller will not divulge price lists, quotations, sales histories, leads or any other information provided by ACA and deemed confidential to any other entity or person without ACA’s written permission.
- (x) The Reseller will not compete with ACA in any fashion or undertake to act as an agent or sub-distributor. The Reseller may only purchase Products from ACA for the purposes of re-sale to

an End User, and may not sell Products to another reseller, distributor or agent for the purposes of re-sale.

- (xi) The Reseller will actively pursue and close any leads referred by ACA, and report to ACA on such leads regularly.
- (xii) The Reseller has a duty to give service to End Users, and in all cases attempt to resolve issues independently before contacting ACA.

8. ACA's Responsibilities

- (i) ACA may issue a press release, subject to the Reseller's approval, announcing this relationship. The Reseller may use this to inform press contacts and Resellers about the new relationship.
- (ii) ACA may issue periodic email notices, which may include product availability information and other tips and techniques for successfully selling and marketing the Products.
- (iii) ACA will endeavour to track purchased items which require renewal and advise the Reseller of renewal opportunities where possible.
- (iv) ACA may, once a better understanding of the Reseller's business has been achieved, refer leads to the Reseller.
- (v) ACA will endeavour to maintain pricing and product information and strive to minimise errors in such information.
- (vi) ACA will endeavour to process orders from the Reseller as quickly as possible and advise promptly of any delays or errors.

9. Pricing and Delivery

Pricing issued by ACA is subject to change and quotations are valid only until the stated expiry date. In the case of Products sourced from outside New Zealand, ACA retains the right to invalidate any pricing if the exchange rate changes by +/- 2 cents.

As a budgetary illustration, any quote offered by ACA does not constitute a binding contract until a purchase order or acceptance of the quote has been provided by the Reseller, and accepted by ACA. Processing of purchase orders and lead times are subject to acceptance by ACA, confirmation of required order details, payment details or account terms, and additional processing time required by Vendors of the Products, for non-stocked and non-standard Products.

Cancellations of orders are accepted, though the Reseller is liable for any costs incurred by ACA up to the time of cancellation. The Reseller accepts liability for Products shipped using their own courier or picked up from ACA premises. Responsibility passes from ACA to the recipient upon successful delivery. The Reseller must report any delivery shortage or damage immediately, ACA will not be held liable for damage incurred after responsibility has passed to the Reseller.

The Reseller must make payment of any amount due to ACA by the due date as stated on issued invoices and statements. Any advice issued by ACA is believed to be reliable, but the Reseller is responsible for confirming and understanding any required information relating to a sale. The ACA Pacific Terms and Conditions of Sale applies to all sales.

10. Terms of Payment

For Resellers who do not have an account with ACA, payment is due at the point of placement of the order.

Requests to open an account should be submitted via the ACA Reseller Application Form and be accompanied by the appropriate banking and commercial references as well as documents permitting an analysis of solvency.

Except for special conditions, payments from Resellers with an account with ACA are due at 30 days from date of invoice. Payments must be made by bank transfer. Payments cannot be made in cash.

11. Failure to Pay

In the absence of payment of a single instalment (or of a single draft on the due date), the entire amount of the sums owed by the Reseller to ACA shall immediately become payable. Deliveries and orders in progress may be suspended. The sale will only be completed and title transferred on full and final settlement of the invoices.

Should ACA be forced to demand payment of invoices, even if simply by registered letter, a liquidated damages sum fixed at 10% of the amount of the debt shall be due by the Reseller, starting from the due date of the invoice, taking into account the costs and time incurred by ACA in demanding payment. Should the collection fees be higher than the amount of liquidated damages, ACA may demand additional compensation, on presentation of receipts.

12. Retention of title

The goods referred to on the delivery slip and the invoice shall remain the property of ACA until the full price has been paid by the Reseller.

Until such time as payment has been made in full to ACA , in cleared funds, of

- (i) All sums due to it in respect of the goods referred to on the delivery slip and the invoice, and
- (ii) All other sums which are, or which become due to ACA from the Reseller,

the Reseller shall hold the goods to the order of ACA. ACA may bring an action for the price notwithstanding that property in the goods has not passed to the Reseller. Until such time as property passes to the Reseller, the Reseller shall upon request deliver up to ACA such of the goods as have not been resold to a value equal to the debt outstanding from the Reseller to ACA as of the date of the request.

If the Reseller does not comply with this request, ACA may, during business hours, without notice, enter upon any premises owned, occupied or controlled by the Reseller where goods are situated or where ACA reasonably believes goods are situated and repossess the goods to a value equal to the debt outstanding from the Reseller to ACA as of the date of repossession, and the Reseller grants ACA an irrevocable licence for this purpose.

If the goods are resold before full payment has been made to ACA, the latter reserves the right to claim payment of the retail price from the sub-purchaser. In the case of a cancellation of an order for goods due to a case of force majeure, or by the Reseller, the advance payments already collected will remain the property of ACA.

13. Returns and Refunds

An ACA Pacific Return Authorisation Request Form must be submitted and approved prior to returning any Products to ACA. ACA will accept returns where the product is:

- (i) within 30 days of invoice, and
- (ii) an open support case raised with ACA if suspected as being DOA. A 'DOA' (Dead on Arrival) product is a faulty Product that failed in the early life of usage or out of box. The DOA period for each Product will vary based on vendor policies, and commonly ranges from 7 to 30 days, and
- (iii) the Product is undamaged and complete.

ACA will use internal discretion for returns where the Product is:

- (iv) no longer required by the End User.

ACA will not accept returns under any circumstances where the Product is:

- (v) outside of 30 days of invoice, or
- (vi) damaged to the extent requiring repair or replacement, or
- (vii) in any way not considered in resaleable condition, or
- (viii) specified as non-returnable prior to sale, or
- (ix) classified as software and has been used, or
- (x) damaged or incomplete but still in resaleable condition, or
- (xi) build-to-order, a service or electronic license, or
- (xii) used but in a resaleable condition, or considered unfit for purpose, as advised by ACA, or
- (xiii) classified as a service which has been in effect, or
- (xiv) within 30 days of invoice but has been deemed 'end-of-life', discontinued or no longer supported by the Vendor.

A return and restocking fee of 20% may be charged. The ACA Pacific Return and Refund Policy applies to all returns and refunds. Refer to 'ACA Pacific - Return and Refund Policy' for further details.

14. Confidential Information

ACA and the Reseller each agree to retain in confidence all information disclosed by either party or a Vendor to the other party pursuant to the Agreement which is either designated as proprietary and/or confidential, or by the nature of the circumstances surrounding disclosure, should reasonably be understood to be confidential (the "Confidential Information"). The Reseller acknowledges and agrees that the Products and all information provided to the Reseller in accordance with the Agreement shall be ACA's or the Vendor's Confidential Information without the need for any marking. Each party agrees to:

- (i) strictly preserve and protect the privacy of the Confidential Information; and
- (ii) refrain from using the other party's Confidential Information except as contemplated herein.

The Reseller is solely responsible for removing any data stored on the Products that the Reseller may consider confidential; ACA and the Vendor will not have any obligations or liability with respect to data remaining on Products returned to ACA. The Reseller shall not publish, or provide any results of benchmark tests, or other evaluations of Products without ACA's prior written consent. ACA shall have the right to use for any purpose any information regarding the Products gained as a result of Reseller's use and evaluation of the Products. Such information shall include but not be limited to changes, modifications, corrections and improvements to the Products suggested by the Reseller.

15. Warranties

Unless explicitly stated otherwise, all Products are supplied "as is" without any representations, conditions, terms or warranties of any kind. All conditions and warranties, whether expressed or implied, and whether arising by statute, custom of the trade or at common law are excluded. ACA and its Vendors do not warrant that the Products will be uninterrupted or error free, nor make any warranty as to the results of usage of the Vendors Products. Any abuse or alterations to Products supplied by ACA, including but not limited to misuse, use beyond the limits of the product or failure to follow instructions will automatically void the warranty. ACA does not guarantee any products against water damage, lightning strikes, abuse or improper installation and wiring without the ground being earthed. The offer and support of, and any service in relation to, product warranties and guarantees are supplied by the Vendor of the Product, not ACA. ACA may optionally provide services and support which offer additional or enhanced terms to Vendor warranties, in which case a contract is supplied between ACA and the Reseller. Any such contracts will be binding in addition to these terms and conditions. If no such contract is supplied by ACA, all responsibility in maintenance of any warranties or guarantees remains with the Vendor.

16. Indemnity

The Reseller and their insurance company shall indemnify ACA from and against all liability, loss, damage, injury, cost, expenses, claims and demands arising from any cause to themselves, others or personal property, other negligence or breach of contract by ACA. ACA will not be responsible for damage or losses, direct or indirect, arising from any cause whatsoever, nor for damage to the equipment caused by outside influences including modifications, improper installation and maintenance, corrosion and/or electrolysis, improper voltage supply, lightning, or careless handling, nor for labour, transportation or other charges incurred in the replacement or repair of damaged parts. ACA assumes no responsibility for the suitability of the intended use of the products provided unless written evidence of acceptance of required suitability is provided by ACA.

17. Limitation of Liability

The Reseller agrees that in no event shall ACA be responsible or liable, with respect to any subject matter of the Agreement or terms and conditions related thereto under any contract, tort (including negligence), strict liability or other legal theory, for any indirect, consequential, incidental, special or exemplary damages of any kind arising out of or in connection with the Agreement. In no event shall ACA's liability include

- (i) cost of procurement of substitute Products, or
- (ii) loss of profits, or
- (iii) indirect, special, incidental or consequential damages, or
- (iv) interruption of use or corruption of data, or

(v) injury.

ACA's liability will never exceed the greater of:

(vi) the amount paid by the Reseller to ACA for Products deemed by ACA to be in direct relation to the Reseller's claim for damages, and

(vii) the limitation of liability as provided by the Vendor Terms.

The foregoing limitations shall apply even if ACA has been advised of the possibility of such damages, and notwithstanding the failure of the essential purpose of any limited remedy.

18. Entire Agreement

This Agreement constitutes the entire Agreement between the parties hereto pertaining to the subject matter hereof and any and all written or oral agreements heretofore existing between the parties hereto are expressly cancelled. Any modifications of this Agreement must be in writing and signed by both parties hereto. In any action to enforce this Agreement the prevailing party will be entitled to costs and legal fees. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, such provisions shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. If any legal proceedings against ACA are initiated, ACA has the unfettered right to choose the jurisdiction of our preference as to where such action against us may be held.