



ABN 45 306 721 253

Reseller Application Form

Please complete the attached Information and Reseller Deed of Agreement form **(sections marked 1. to 8.)** in full and send all pages (excluding this page) to:

Mittoni Pty Ltd
26 Bando Road
Springvale Vic 3171
Australia

or by facsimile to (03) 9546 5252.

PLEASE NOTE An original should be mailed to the above address if the application form is initially transmitted by facsimile.

We look forward to welcoming you as a reseller and providing you with excellent customer service and support.

1. APPLICANT DETAILS

Legal Business Entity: _____

ABN: _____

Trading Name: _____

Date Business Established: _____

Registered Office: _____

Shipping Address: _____

Full Name of Owners/Directors:

1. _____

2. _____

3. _____

4. _____

Telephone Number: _____

Facsimile Number: _____

Email Address: _____

Purchasing Person: _____

Website Contact Person: _____

Sales Contact Person: _____

Accounts Contact: _____

2. NATURE OF BUSINESS

Number of Employees: _____

Approx Yearly Sales: _____

Products of Interest: _____

I have been previously contacted by or have been speaking with:

Paddy / Jilei / Timmy / Phillip / No one yet, please sign me up! (circle)

We'd like to request an account manager whom speaks: English / Mandarin / Cantonese (circle)

**DEED OF AGREEMENT
BETWEEN
MITTONI PTY LTD & BUYER/RE-SELLER**

1. → This Agreement is made on theday of 2008.

between

MITTONI PTY LTD (ABN 45 306 721 253) of 26 Bando Road, Springvale, Victoria, 3171 (“Mittoni”) (“The supplier”)

and

2. → Buyer Name: (“the buyer”)

ABN:

Address

(“the parties”)

AGREEMENT

RECITAL

- A. Mittoni is an Australian company which supplies goods and services to the Information Technology and Electronics sectors. Many of the goods supplied by Mittoni are imported.
- B. The buyer is a wholesaler, re-seller, processor or user of the goods supplied by Mittoni.
- C. The purpose of this Agreement is to establish the terms on which Mittoni will supply to the buyer.

THE PARTIES AGREE AS FOLLOWS

1. Definitions

In this Agreement “goods” includes computer and electronic hardware and software; and components and “services” includes maintenance and support services in relation to those goods or to similar goods supplied by others or similar goods supplied by third parties through the agency of Mittoni.

2. Terms of Supply

The following are the terms on which Mittoni will supply goods and/or services to the buyer.

- (a) (i) The buyer acknowledges that Mittoni has entered into and is bound by distributorship agreements with its suppliers of goods. The capacity of Mittoni to meet orders is always governed by the continued existence of its distributorship agreements with its suppliers and those suppliers’ capacities to supply the types and quantities of the goods specified in the Order.
- (ii) Mittoni and the buyer both acknowledge that they have had equal strength in negotiating this Agreement and that the buyer cannot rely on any form of economic or commercial duress in challenging this Agreement.
- (b) All goods and services ordered from Mittoni must be ordered in the form of an acceptable Purchase Order of the buyer. In placing that Order the buyer acknowledges that it is bound by the terms of this Agreement to the exclusion of any terms or conditions which the buyer may purport to insert in the Purchase Order or other associated documents of the buyer.
- (c) Any inconsistency or difference in the terms of the parties will be resolved by accepting the terms proposed in this Agreement to the exclusion of the terms proposed by the buyer.
- (d) Mittoni maintains current price lists and all goods ordered will be sold at those prices plus freight, handling and insurance, which are shown separately on invoices.
- (e) Notwithstanding the previous clause, any goods which have to be ordered by Mittoni to meet a Purchase Order may be at a different price, subject to the then pricing policy of Mittoni’s supplier(s)

and such variations will be advised to the purchaser prior to confirming the Order(s).

- (f) Notwithstanding the previous clauses, Mittoni reserves the right to vary prices at any time without notice to the purchaser.

3. Payment

- (a) Mittoni invoices will be issued at the times specified in the Order(s), specifying how the amounts are calculated.
- (b) Invoices must be paid within the time period specified in the payment terms agreed between Mittoni and the buyer (“the due date”). Otherwise all invoices are payable on a cash on delivery (COD) basis unless terms of trade are varied in writing by Mittoni’s Managing Director.
- (c) Orders may be delivered and invoiced for payment in partial shipments and the short delivery of goods under such circumstances does not give reason for rejection of the goods for being incomplete.
- (d) The buyer agrees not to delay, withhold or refuse full payment for goods supplied by Mittoni for any reason, including reasons related to the provision of warranty, future warranty or support.
- (e) Invoices which are not paid by the due date are subject to interest calculated daily from due date until date of payment at the current wholesale rate set by the Reserve Bank each month plus 2%.
- (f) Expenses and charges incurred by Mittoni in attempting to recover overdue or disputed accounts from buyers are recoverable by Mittoni from the buyer, including, without limitation, debt collection fees, legal fees, court costs, interest, and the like.

4. Cancellation/Variation of Orders

- (a) The cancellation or variation of an Order by a buyer might lead to Mittoni’s suppliers charging Mittoni for the cancellation or variation. In such an instance, all such costs to Mittoni are recoverable from the buyer.
- (b) All other costs flowing from the cancellation or variation of an Order by a buyer are recoverable by Mittoni from the buyer, including full payment for the goods if they have been allocated or despatched to Mittoni prior to the written notification to Mittoni of the cancellation or variation.

5. Rejected Goods

- (a) Buyers must inspect goods within 3 days of delivery to identify faults, defects or incorrect consignment quantities. If such faults, defects or inaccuracies are discovered the buyer must return the goods together with a Return Materials Authorisation Form¹ within a further 3 days. A Return Materials Authorisation number must first be obtained from Mittoni. Unless this procedure is followed Mittoni will not accept returns. If the returned goods are found to be not faulty or defective they will be returned to the buyer at the buyer’s cost.

6. Frustration

- (a) Contracts which cannot be completed in a timely manner due to errors by the original supplier, product unavailability, shipping problems, or other factors outside the control of the parties may be cancelled by Mittoni without penalty.

7. Force Majeure

- (a) Events outside the control of the parties including but not limited to shipping strikes, lost containers, lost consignments, etc permit Mittoni to cancel or defer delivery on contracts, at their choice, with no penalty payable to the buyer for any reason whatsoever.

..... ← 3.
(Director of Buyer to sign)

¹ A copy of this form is attached.

8. Romalpa Clause

- (a) All goods supplied by Mittoni remain the property of Mittoni until full and final payment of all monies, including freight and insurance, has been made by the buyer. It is agreed by the parties that Mittoni reserves the right to enter buyers' premises to recover any goods previously supplied if all monies are not paid for in full and that it may enforce this right against administrators, receivers or managers appointed to supervise the affairs of a buyer.
- (b) **NOTWITHSTANDING** paragraph 8(a) above, the risk on delivered goods is the responsibility of the buyer who must maintain appropriate insurance against loss or damage to those goods at all times.

9. Warranties

- (a) Most products supplied by Mittoni are covered by a Mittoni warranty. In some cases there may be an applicable original supplier's warranty. Buyers must familiarise themselves with the conditions of such warranties and note that for such warranties by original suppliers it is the responsibility of the buyer to deal direct with the original supplier.
- (b) It is an essential term of this Agreement that the buyer provides to all customers all available supplier literature regarding any goods sold and ensures that their customers are aware of any limitations to or conditions on the warranties provided in such literature.
- (c) The period of warranty commences on the date of delivery of the goods by Mittoni to the buyer.

10. Exclusion of Liability

- (a) Subject to any applicable legislation, these terms state:
 - the entire liability of each party to the other; and
 - the extent of each party's liability for any Claim.
- (b) Mittoni acknowledges that this Agreement is subject to the *Trade Practices Act 1974* and any other relevant Commonwealth or State legislation and that any provision of this agreement in contravention of such legislative provisions shall be read down so as to be valid or shall be excluded and excised from this agreement if necessary to make the Agreement valid.
- (c) Mittoni's total liability to any buyer shall be limited as follows:
 - (i) For a breach of an express term of this Agreement – a refund to the buyer of the amount paid by the buyer for the goods or services supplied and in respect of which the breach occurred or the refund of the cost of an equivalent replacement product at current market values, whichever is lesser; and
 - (ii) For a breach of a non-excludable condition (other than one implied by s. 69 of the Trade Practices Act 1974) – at Mittoni's option, supplying, repairing or replacing the goods or paying the cost of supplying, repairing or replacing the goods, or supplying again or paying the cost of supplying again the services in respect of which the breach occurred.
- (d) Mittoni excludes:
 - (i) All conditions, warranties and terms implied by statute, general law or custom, except any non-excludable condition.
 - (ii) All liabilities in contract for consequential or indirect damages arising out of or in relation to goods or services supplied (or not supplied) or any delay or failure in supplying goods or services even if:
 - Mittoni knew they were possible; or
 - They were otherwise foreseeable, including without limitation, lost profits and damage suffered as a result of Claims by any third party such as a customer of a buyer; and
 - All liability to a buyer in tort (including, without limitation, negligence) and bailment for acts or omissions of Mittoni, its employees, agents and subcontractors arising out of or in relation to goods, services, or any delay or other failure in supplying goods or services or these terms of supply.

11. Indemnity

- (a) The buyer indemnifies Mittoni, its employees, agents and subcontractors against all losses, damages, expenses and costs (on a full indemnity basis and whether incurred by or awarded against any of them) that any of them may sustain or incur as a result, whether directly or indirectly, of any Claim.
- (b) For the purposes of these terms of supply "Claim" means any claim by any third person for loss or damage to any property, injury to or death of any person or economic loss arising out of or relating to any or all of the goods or services, any delay or failure in supplying the goods or services and these terms of supply.

12. General

- (a) No buyer may use Mittoni or supplier trademarks, names, or other intellectual property rights without the prior written approval of Mittoni or the supplier.
- (b) Mittoni and the buyer both acknowledge that Mittoni will supply goods and services as an independent supplier.
- (c) This Agreement contains the entire agreement between Mittoni and the buyer in relation to its subject matter and supersedes all prior negotiations, agreements, understandings and commitments between Mittoni and the buyer in relation to the subject matter of the Agreement.
- (d) This Agreement is governed by the law of the Commonwealth of Australia and the State of Victoria. Both parties agree that any contract between the parties was formed in Victoria and both parties irrevocably and unconditionally submit to the exclusive jurisdiction to the Courts of Victoria or of the Commonwealth of Australia in relation to their mutual business dealings.
- (e) Any dispute arising between the parties must first be referred to mediation in accordance with the Australian Commercial Disputes Centre Mediation Guidelines.
- (f) Mittoni may subcontract to any person the performance of its obligations under this Agreement.

13. Change of Ownership

- (a) In the event of any change of ownership of the buyer or any change of any Director of the buyer Mittoni reserves the right to cancel this Agreement forthwith unless it is re-executed by the new owner(s)/Director(s) to Mittoni's satisfaction and with Mittoni's consent.

14. Severance

- (a) Any term of this Agreement which is void or offends a contrary statutory provision shall be read down so as to be valid or, if that can not be done, shall be severed from this Agreement without affecting the other terms of the Agreement and their application.

IN WITNESS whereof this document has been duly executed on

..... (date)

← 4.

SIGNED and sealed by a Director of the Supplier in the presence of:)
)
) (Director of Mittoni to sign)
)
)
)
)
)

SIGNED and sealed by a Director of the Buyer in the presence of:) ← 5.
)
) (Director of Buyer to sign)
)
) ← 7. ← 6.
 (Signature of Witness)) (Print name of Director)
)
) ← 8.
 (Print name of Witness)