



Hummingbird Electronics – Website Terms of Use

WELCOME TO WWW.HMBE.COM.AU. THE FOLLOWING "TERMS AND CONDITIONS" FORM A LEGALLY BINDING AGREEMENT BETWEEN YOU AND US. YOU ACKNOWLEDGE AND AGREE THAT THESE TERMS AND CONDITIONS APPLY TO YOUR ACCESS TO, AND USE OF, THIS SITE AND THE SERVICE. IN ACCESSING OR USING THIS SITE AND THE SERVICE, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTOOD, AND AGREE TO BE BOUND BY, THESE TERMS AND CONDITIONS. IF YOU DO NOT ACCEPT THESE TERMS AND CONDITIONS, THEN YOU MUST REFRAIN FROM ACCESSING AND USING THIS SITE AND THE SERVICE.

1. GENERAL TERMS AND CONDITIONS

1.1 Privacy Policy

Our Privacy Policy is set out on this Site at www.hmbe.com.au and shall apply to You and Your use of this Site.

1.2 Amendments to terms and conditions

We reserve the right to amend these terms and conditions at any time. Any amendments shall be effective immediately upon notification on the Site. Your continued use of the Site following such notification will represent an agreement by You to be bound by the terms and conditions as amended.

1.3 Access and use

The Site and the Service are intended for personal use only and may not be sold, redistributed or used for any commercial purpose.

To access some parts of the Site and to use the Service, You must become a Registered User. You may have limited access to browse and use certain features of the Site without becoming a Registered User.

1.4 Account

To become a Registered User, You must provide Us with Your personal information (including, without limitation, Your name and e-mail address. To use the Service, You will be required to login using Your email address and a password nominated by You.

You are entirely responsible to maintain the confidentiality of Your password and You are responsible for Your use (or of any person using Your email address and password) of the Site and the Service.

You may change Your password at any time by following instructions on the Site.

1.5 Service

By accessing and using the Site or the Service, You assume all risks associated with such access and use. To the fullest extent permitted by law, We do not represent or warrant that the Site or the Services generally available through the Site will be uninterrupted or error-free or defect-free or that errors or defects in the Site or the Service will be corrected. We do not represent or warrant to You that any electronic files available through the Site or the Service will be free of Harmful Code nor that Your use of the Site and the Service will achieve any particular result.

We reserve the right, at any time, to disable, close or render inaccessible the Service for so long as We desire for any reason whatsoever, and without the need to provide any reasons. To the maximum extent permitted by law, We do not accept liability for any Loss which You may suffer or incur as a result of such actions.

Hummingbird Electronics ABN 77 136 785 092

Building E, Unit 1 Technology Place, Williamstown, NSW 2318 | PO Box 210, Anna Bay, NSW 2316

Local | Phone 1300 155 541 | **Fax** (02) 4982 2119 | **International** | Phone +61 2 4919 0427 | Fax +61 2 4982 2119

Email admin@hmbe.com.au | **Web** www.hmbe.com.au

1.6 Security

You acknowledge that despite all reasonable precautions on Our part, there is a risk of unauthorised access to, or alteration of, Your transmissions of data or of information contained on Your computer system or on this Site. To the maximum extent permitted by law, We do not accept liability for any Loss which You may suffer or incur as a result of such activity. You agree to immediately notify Us of any unauthorised use of Your user name and password or any other breach of security.

You must take Your own precautions to ensure that the processes taken by You to access this Site and the Service do not expose You to the risks of Harmful Code.

1.7 Change to Site or Service

We reserve the right to make any changes to the Site or the Service as considered by Us necessary or desirable, at any time, without notice.

1.8 Lawful use

You must use the Site and the Service for lawful purposes only and ensure that Your access to, or use of, the Site and the Service is not illegal or prohibited by law. It is Your responsibility to obtain independent legal advice in relation to compliance with all Applicable Laws in using the Site and the Service.

You agree at all times to deal with any information or material provided by Us or accessed through the Site in a manner which complies with all Applicable Laws of Australia or of any other relevant jurisdiction.

1.9 Misuse and interference

You must not:

- (a) attempt to gain unauthorised access to any part of the Site or the Service;
- (b) interfere with or disrupt (or attempt to interfere or disrupt) any servers or networks connected to the Site or the integrity or performance of the Service;
- (c) disable any protection software associated with the Site or the Service;
- (d) send or store any Harmful Code;
- (e) use any feature of the Site or the Service or any other means to send unsolicited commercial correspondence to Site Users, whether individually or as a group;
- (f) solicit any business from any other Site User or buy or sell (or attempt to buy or sell) products and/or services through the Site or the Service.

To the maximum extent permitted by law, We accept no liability for any Loss suffered or incurred by You arising from or in connection with any Site User's misuse of any User Content Posted by You on the Site.

1.10 Prohibited User Content

You must not Post any User Content that:

- (a) may infringe the rights of any other person, including without limitation Intellectual Property rights;
- (b) may defame another person;
- (c) may disclose a person's confidential information;
- (d) is not accurate, complete or current or may otherwise mislead or deceive other persons;
- (e) may contravene Your privacy obligations or any other person's privacy obligations;

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- (f) is illegal or may constitute or encourage any contravention of any Applicable Laws by any person;
- (g) is threatening, offensive or abusive or is intended or likely to threaten, offend or abuse another Site User;
- (h) is otherwise, in Our view, inappropriate.

1.11 **Ownership of User Content**

You acknowledge and agree that, upon Posting, all User Content is Our property. To the extent that any Intellectual Property in and to the User Content belongs to You, You unconditionally and irrevocably:

- (a) assign to Us all of Your Intellectual Property in and to such User Content; and
- (b) consent to use of the User Content by Us in whatever manner We see fit (including, without limitation, where such use would otherwise, in the absence of such consent, infringe any moral or authors rights under any laws), without compensation to You.

To the extent the Intellectual Property in and to any User Content cannot be assigned by law, You hereby unconditionally and irrevocably grant (or represent and warrant that the owner of such rights has expressly unconditionally and irrevocably granted) to Us, a worldwide, royalty-free, perpetual and non-exclusive licence to use, reproduce, copy, adapt, store, distribute, print, display, perform, broadcast, publish, communicate to the public, make available to the public or create derivative works of such User Content anywhere, for any purpose and in any form, without any compensation to You.

You acknowledge and agree that You are solely responsible for any User Content Posted by You.

You represent, warrant and undertake to Us that:

- (a) all User Content Posted by You does not contravene any Applicable Laws;
- (b) all User Content Posted by You does not infringe the Intellectual Property rights of any person;
- (c) all User Content Posted by You will be free of Harmful Code; and
- (d) all User Content Posted by You will otherwise comply with these Terms and Conditions.

All information submitted by You on the Site that is personal information shall be subject to Our Privacy Policy.

1.12 **Review and modification of User Content**

We reserve the right to review User Content prior to publication on the Site or any time thereafter and to edit or remove any User Content for any reason whatsoever and without the need to provide any reasons, including without limitation where, in Our opinion the User Content does not comply with these Terms and Conditions.

We do not undertake to monitor, moderate or otherwise review User Content and in the event that We do monitor, moderate or otherwise review User Content, We give no warranty or undertaking that such actions will be complete or will be performed with due care and skill or on a regular or ongoing basis.

1.13 **Information on the Site**

Whilst We make all reasonable efforts to ensure the accuracy of the Materials, We do not warrant or represent the accuracy, completeness or suitability for Your intended use of any information or materials on the Site, including without limitation User Content and the Materials. You are responsible for Your use of any information or materials obtained from the Site. You should make Your own enquiries to check if the information or materials on the Site are accurate, complete and suitable for Your intended use.

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The Site may contain information or materials that include the views or recommendations of others that are not necessarily Our views. In particular We do not endorse the views Posted by any Registered User. All User Content expresses the views of the relevant author and does not necessarily reflect Our views or indicate Our support of, or commitment to, any matter, including a particular course of action. Moreover all User Content does not constitute advice by Us or a recommendation by Us as to a particular matter or course of action.

- (A) The Site may contain links and pointers to internet sites maintained by third parties. These links to third party sites are provided for Your convenience. Such links are not under Our control and We are not responsible for the contents (including the accuracy, completeness or suitability for Your intended use) of any linked site or any link contained in a linked site. We do not endorse any information on those linked sites or any associated entity, product or service.

1.14 **Online orders**

You hereby acknowledge and agree that any order placed by You for goods and/or services via the Site:

- (a) is subject to Our Trading Terms as set out on the Site at www.hmbe.com.au; and
- (b) represents an offer by You to purchase such goods and/or services at the price, plus the relevant delivery charges, specified on the Site at the time of placing Your order and on the terms set out in these Terms and Conditions.

We reserve the right to accept or reject any order placed by You in whole or in part for any reason, including without limitation the unavailability of products.

Your contract with Us for the purchase of any goods and/or services via the Site is formed when We advise that Your order has been accepted and receipt of Your payment is confirmed by Us. You cannot cancel an order after acceptance by Us (including as a result of any delay in delivery) without Our written agreement, which can be withheld in exercise of Our sole discretion.

By placing an order via the Site, You represent and warrant that You do not intend to resell the goods ordered. If You intend to resell the goods ordered, You are not permitted to place an order via the Site. We may reject any such order placed by You at any time, despite any initial acceptance of Your order, where We reasonably consider that You are purchasing Our goods for resale purposes.

You are responsible for providing accurate order details, including Your contact information and delivery address at the time of ordering.

To the extent of any inconsistency between these Terms and Conditions and Our Trading Terms as concerns any orders placed for You via the Site, these Terms and Conditions shall prevail.

1.15 **Prices and payment for online orders**

All prices shown on the Site are in Australian dollars and are inclusive of GST. Any foreign currency prices quoted by Us are approximations only.

All payments must be made in Australian dollars. You may pay for an order using any of the accepted payment methods displayed on the Site at the time of ordering.

We will charge You, and You agree to pay, the price of the goods and/or services ordered via the Site together with all delivery charges specified on the Site at the time of placing Your order. Prices for Our goods and services are subject to change from time to time. Subject to these Terms and Conditions,

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once We have accepted Your order, We will not change any prices or delivery charges that apply to the goods and/or services in that order.

If We are unable to successfully process payment of Your order, We may reject or cancel Your order. You must not pay, or attempt to pay, for an order through any fraudulent or unlawful means.

We may offer promotional discounts from time to time. You must agree to the terms of the promotion in order to receive the discount.

1.16 **International orders**

We may, in respect of some or all of Our goods, restrict orders to purchasers within Australia that have an Australian postal address. Where applicable, this will be stated on the relevant pages of the Site and You represent and warrant that any orders placed by You for Our goods via the Site are for use of such goods within Australia only and are not ordered with the intention that they are to be forwarded to persons outside Australia.

Where orders are shipped to a delivery address outside Australia, You are responsible for:

- (a) compliance with all laws of the destination country, including without limitation for ensuring that the goods can lawfully be imported into the destination country;
- (b) payment of any import taxes, customs duties or any other taxes, duties, fees and charges that may be levied by the destination country; and
- (c) compliance with any customs clearance procedures, which may cause delays beyond Our estimated delivery dates.

1.17 **Delivery of online orders**

We will provide You with an estimated date for delivery of all orders. Whilst We will use Our reasonable endeavours to effect delivery by the estimated delivery date, all dates are estimates only. We do not provide any guarantee that delivery will be effected by the estimated delivery date, and We will not be held accountable or liable for any delays in delivery.

In the event that multiple items are ordered, part deliveries may be made where all goods are not available. All reasonable attempts to notify You will be made using the details You provided at the time of ordering.

It is Your responsibility to advise Us if an order does not arrive. Once We are made aware of the non-delivery of an order, We will make enquiries of Our delivery provider to ascertain the cause of the delay.

We accept no responsibility for goods lost in transit or goods lost, stolen or damaged after delivery. Any decision to replace goods ordered in such circumstances will be made by Us, on a case by case basis, in exercise of Our sole discretion.

We cannot be held responsible for incorrect delivery details provided by You. We reserve the right to charge You an administration fee and additional delivery charges for redelivery of Your order where it is returned to Us for this reason.

1.18 **Returns of online orders**

The terms and conditions relating to "Return of goods" set out in Our Trading Terms will apply to all goods purchased by You via the Site.

All goods purchased by You via the Site also come with a manufacturers' warranty. Our warranty documents can be found on the Site at www.hmbe.com.au

1.19 **Our database**

By ordering goods via the Site We may add You to Our database. From time to time We may contact You about offers and new products. You can easily opt out of any further marketing communications by unsubscribing via a link which will be provided on all correspondence that We send to You or by putting a request in writing to Us.

1.20 **Disclaimer**

To the maximum extent permitted by law, We do not accept any liability for, and You hereby release Us from any claim in relation to, any Loss (including loss of profits or indirect, consequential, incidental, special exemplary or punitive loss or damage), howsoever caused (including through Our negligence), suffered or incurred by You arising from or in connection with:

- (a) Your access to, or use of, the Service, this Site, any User Content or any linked site;
- (b) any change in content of the Site;
- (c) any decision or action taken by You in reliance on any information or materials on the Site; or
- (d) the availability of the Site and the Service or any error or defect in the Site or the Service.

The above disclaimer does not attempt or purport to exclude liability under any statute if, and to the extent, that such liability cannot be lawfully excluded (including, without limitation, any guarantee under the Australian Consumer Law (a **non-excludable provision**)).

1.21 **Implied terms**

Subject to the non-excludable provisions of the Australian Consumer Law, and to the fullest extent permitted by law, any guarantee, condition or warranty (including, without limitation, any implied guarantee, condition or warranty of merchantability, satisfactory quality or fitness for a particular purpose) which would otherwise be implied in this Agreement is hereby excluded.

Where the Australian Consumer Law or any other legislation implies in these terms and Conditions any guarantee, condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of, or exercise of, or liability under, such guarantee, condition or warranty, to the maximum extent permitted by law, Our liability for any breach of such guarantee, condition or warranty shall be limited, at Our option, to one or more of the following:

- (a) if the breach relates to goods: the replacement of the goods or the supply of equivalent goods; the repair of such goods; the cost of replacing the goods or of acquiring equivalent goods; or the cost of having the goods repaired; and
- (b) if the breach relates to services: the supplying of the services again or the cost of having the services supplied again.

You acknowledge and agree that reliance by Us on this limitation of liability is fair and reasonable in all the circumstances.

1.22 **Force Majeure**

We accept no liability for any delay or failure to perform Our obligations under these Terms and Conditions if such a delay or failure is due to circumstances beyond Our reasonable control.

1.23 **Indemnity**

You agree to indemnify, and keep indemnified, Us and Our officers, employees and agents (**those indemnified**) against all Loss suffered or incurred by those indemnified (including legal fees on a full indemnity basis), directly or indirectly, in connection with:

- (a) any User Content Posted by You;

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- (b) any decision or action taken by You in reliance on any information or materials on the Site and any linked site;
- (c) any breach of these Terms and Conditions by You;
- (d) any wilful misconduct by You;
- (e) any negligent act or omission by You.

1.24 **Copyright**

All copyright in the Materials (including, without limitation, text, graphics, logos, and icons) is owned by Us or third party licensors and/or their successors and assigns. Material procured from a third party may be the subject of copyright owned by that third party. Except as expressly authorised by, and subject to the conditions prescribed under, the *Copyright Act* 1968 (Cth) or except as expressly permitted by these terms and conditions, You may not, in any form or by any means:

- (a) copy, adapt, reproduce, store, distribute, print, display, perform, broadcast, publish, communicate to the public, make available to public or create derivative works of the whole or any part of the Materials; or
- (b) commercialise the whole or any part of the Materials without Our express written permission or, in the case of third party material, from the owner of the copyright in that material.

1.25 **Trade marks**

Trade marks used on the Site are Our trade marks (registered or unregistered) or trade marks of third parties. If You use any trade marks owned by Us, in reference to Us, the Site or the Service, You must include a statement attributing that trade mark to Us. You must not use any of Our trade marks or trade marks of third parties featured on the Site:

- (a) in, or as the whole or part of, Your own trade marks;
- (b) in connection with any business, products or services which are not Ours;
- (c) in a manner which may be confusing, misleading or deceptive to any person; or
- (d) in a manner that disparages Us, the third party owners of the trade marks or the Site.

1.26 **Linking to the Site**

You may only insert a link to the Site if:

- (a) the link is presented in a way which fairly represents Our business and the Site and does not disparage Us;
- (b) the context in which You insert the link does not give visitors the impression that the relevant site, or business, is sponsored or endorsed by Us, or otherwise affiliated with Us;
- (c) the source of the material on the relevant site is clear, including without limitation by ensuring that the context of the link does not suggest that We have created any of the content on that site; and
- (d) the link opens in a new window, and not in the navigation of the relevant site.

1.27 **Termination**

We may suspend Your access to the Site, or terminate this Agreement and Your access to the Site (and any orders for goods or services placed by You with Us by virtue of Your use of this Site) for any reason, including without limitation if We reasonably consider that You are in breach of any provision of these Terms and Conditions. We may, at Our discretion, terminate this Agreement and Your access to all or part of the Site without the need to provide reasons.

Termination of this Agreement will not end those provisions that are capable of surviving the ending of this Agreement (including, without limitation, clauses 1.11, 1.12, 1.13, 1.20, 1.21, 1.23, 1.24, 1.25, 1.26, 1.27 and 1.28).

1.28 **General provisions**

Any waiver or relaxation, in whole or part, of any rights available to Us under these Terms and Conditions is only valid if it is in writing and is limited to the instance referred to in the writing (or if no instance is referred to in the writing, to past breaches only).

If any provision of this Agreement is held to be invalid, unenforceable or illegal for any reason, it is to be read down to give it as much effect as possible, or if it is not capable of having any effect at all, it is to be severed from these Terms and Conditions, in which case, the remainder of these Terms and Conditions shall nevertheless continue in full force.

Nothing in this Agreement shall be deemed to give rise to a relationship of agency or partnership or otherwise impose a duty of care upon Us in respect of Your use of the Site.

The laws governing this Agreement will be the laws in the State of South Australia; Australia and You irrevocably submit to the non-exclusive jurisdiction of the courts of that State.

2. **DEFINITIONS**

In these Terms and Conditions, unless the context otherwise requires:

Agreement means the Agreement between You and Us comprising these terms and conditions.

Applicable Laws means any and all statutes, regulations, by-laws, ordinances or subordinate legislation in force from time to time which pertains to Your use of, and access to, the Site and the Service and the Posting of any User Content on the Site and includes, without limitation, those relating to equal opportunity, anti-discrimination, trade practices, fair trading, Intellectual Property, privacy and confidentiality.

Harmful Code means any computer virus, trojan, worm or other computer code that, directly or indirectly, is harmful or disabling or which assists in or enables unauthorised access to or corruption of data.

Intellectual Property means any registered or unregistered rights in any copyrights, patents, inventions, discoveries, trade marks, designs or confidential information or any rights of a similar nature under the laws of Australia or anywhere else in the world.

Loss means loss or damage of any kind (including liability to a third party).

Materials means any content made available by Us via the Site (including but not limited to information, data, documents, images, photographs, graphics, audio, videos, or webcasts).

Post means to make available information and/or other materials on the Site.

Registered User means a Site User registered with the Service.

Service means the provision by Us of any services via the Site, including without limitation any discussion forums, technical or product support services, product selectors, calculators or other applications and other benefits for the use of persons made available through the Site.

Site means the website operated by Us at www.hmbe.com.au.

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Site User means any person who has access to, or uses, the Site.

User Content means any text, information and other submissions (including, without limitation, any creative suggestions, ideas, notes, artwork, drawings, literary works, designs, concepts, content, materials or information of any nature) submitted to Us, or Posted on the Site, by a Site User.

We, Us, Our means Redarc Electronics Pty Ltd (ACN 009 971 794) atf the Redarc Trust trading as Hummingbird Electronics and all related bodies corporate and associates (as defined in the *Corporations Act 2001* (Cth)) of Redarc Electronics Pty Ltd.

You, Yourself, Your means any person, business, company or organisation who is a Site User.

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