

# IT Business Services Ltd. Terms of Trade

## 1. Definitions

1. "Seller" means IT Business Services Ltd. its successors and assigns or any person acting on behalf of and with the authority of IT Business Services Ltd.
2. "Client" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
3. "Goods" means all Goods or Services supplied by the Seller to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
4. "Price" means the Price payable for the Goods as agreed between the Seller and the Client in accordance with clause 5 below.

## 2. Acceptance

1. The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.
2. These terms and conditions may only be amended with the Seller's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Seller.
3. These terms and conditions are meant to be read in conjunction with the Terms and Conditions posted on the Seller's website. If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail.

## 3. Electronic Transactions Act 2002

1. Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act 2002 or any other applicable provisions of that Act or any Regulations referred to in that Act.

## 4. Change in Control

1. The Client shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by the Seller as a result of the Client's failure to comply with this clause.

## 5. Price and Payment

1. At the Seller's sole discretion the Price shall be either:
  1. as indicated on any invoice provided by the Seller to the Client; or
  2. the Price as at the date of delivery of the Goods according to the Seller's current price list; or
  3. the Seller's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of seven (7) days.
2. The Seller reserves the right to change the Price:
  1. if a variation to the Goods which are to be supplied is requested; or
  2. if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or

3. where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, change of design, availability of components, delays in sourcing components, etc) which are only discovered on commencement of the Services; or
  4. in the event of increases to the Seller in the cost of labour or materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond the Seller's control.
3. At the Seller's sole discretion a non-refundable deposit may be required.
  4. Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by the Seller, which may be:
    1. on delivery of the Goods;
    2. before delivery of the Goods;
    3. for certain approved Clients, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
    4. the date specified on any invoice or other form as being the date for payment; or
    5. failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Seller.
  5. Payment may be made by cash, cheque(Goods are released once cheque clears), bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to two percent (2%) of the Price), or by any other method as agreed to between the Client and the Seller.
  6. Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Seller an amount equal to any GST the Seller must pay for any supply by the Seller under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

## **6. Descriptions of Goods**

1. While the Seller endeavours to provide accurate descriptions of Goods, the Seller cannot warrant that the description is accurate. The Seller shall reserve the right to correct any error or omission should they become aware of any such inaccuracy.
2. Any image provided by the Seller is for illustrative purposes only, and the Seller cannot guarantee that the image shall reproduce in true colour or that the image will reflect or portray the full design or options relating to the Goods.

## **7. Orders for Goods**

1. The Seller supplies and despatches Goods to Clients within New Zealand only.
2. The Seller endeavours to ensure that the product list is current; however the Seller gives no undertaking as to the availability of any advertised Goods.
3. The Seller's advertised price list can be accessed from the home page of the Seller's website and reserves the right to amend the Price at any time.
4. The Seller charges for shipping to the North and South Islands of New Zealand only. The cost is calculated depending on the buyers location and order size. This is displayed in the checkout process.

5. When the Client places an order with the Seller, the Client is required to provide their name, address for delivery, email address, telephone contact and credit card details. The Seller undertakes to take due care of this information; however, in providing the Seller with this information the Client accepts that the Seller is not liable for its misuse due to any error in transmission, virus, or malware.
6. The Client accepts that by placing an order by credit card with the Seller for the first time, the Seller shall ask the Client to verify ownership of the card by doing a security check.
7. The Seller undertakes to accept or reject the Client's order within seven (7) days. Where the Seller has not responded within that timeframe, the offer is deemed to be rejected. The Seller is not required to give any reason for rejecting any offer to purchase, however the most likely reason for any rejection will be due to current stock unavailability.
8. Where the Client has submitted an order, that order cannot be cancelled even if the Seller has yet to accept or reject the offer.
9. The Seller does not deliver to PO Boxes or Private Bags.
10. All deliveries must be signed for at time of delivery.
11. Delivery for ordered Goods will be set out as per the Seller's terms of use on the Seller's website.

## **8. Delivery of Goods**

1. Delivery ("Delivery") of the Goods is taken to occur at the time that:
  1. the Client or the Client's nominated carrier takes possession of the Goods at the Seller's address; or
  2. the Seller (or the Seller's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
  3. The Client must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery and/or storage.
  4. Any time or date given by the Seller to the Client is an estimate only. The Client must still accept delivery of the Goods even if late and the Seller will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.

## **9. Risk**

1. Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
2. If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.
3. If the Client requests the Seller to leave Goods outside the Seller's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.
4. The Client acknowledges that the Seller is only responsible for parts that are replaced by the Seller and does not at any stage accept any liability in respect of previous services and/or goods supplied by any other third party that subsequently fail and found to be the source of the failure, the Client agrees to

indemnify the Seller against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising.

#### **10. Title**

1. The Seller and the Client agree that ownership of the Goods shall not pass until:
  1. the Client has paid the Seller all amounts owing to the Seller; and
  2. the Client has met all of its other obligations to the Seller.
2. Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
3. It is further agreed that:
  1. until ownership of the Goods passes to the Client in accordance with clause 10.1 that the Client is only a bailee of the Goods and must return the Goods to the Seller on request.
  2. the Client holds the benefit of the Client's insurance of the Goods on trust for the Seller and must pay to the Seller the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
  3. the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for the Seller and must pay or deliver the proceeds to the Seller on demand.
  4. the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Seller and must sell, dispose of or return the resulting product to the Seller as it so directs.
  5. the Client irrevocably authorises the Seller to enter any premises where the Seller believes the Goods are kept and recover possession of the Goods.
  6. the Seller may recover possession of any Goods in transit whether or not delivery has occurred.
  7. the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Seller.
  8. the Seller may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

#### **11. Personal Property Securities Act 1999 ("PPSA")**

1. Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
  1. these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  2. a security interest is taken in all Goods previously supplied by the Seller to the Client (if any) and all Goods that will be supplied in the future by the Seller to the Client.
2. The Client undertakes to:
  1. sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Seller may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;

2. indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
3. not register a financing change statement or a change demand without the prior written consent of the Seller; and
4. immediately advise the Seller of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
5. The Seller and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
6. The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
7. Unless otherwise agreed to in writing by the Seller, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
8. The Client shall unconditionally ratify any actions taken by the Seller under clauses 11.1 to 11.5.

## **12. Security and Charge**

1. In consideration of the Seller agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
2. The Client indemnifies the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Seller's rights under this clause.
3. The Client irrevocably appoints the Seller and each director of the Seller as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Client's behalf.

## **13. Client's Disclaimer**

1. The Client hereby disclaims any right to rescind, or cancel any contract with the Seller or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by the Seller and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.

## **14. Defects**

1. The Client shall inspect the Goods on delivery and shall within forty-eight (48) hours of delivery (time being of the essence) notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Seller has agreed in writing that the Client is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods.

## **15. Returns**

1. Where the Client wishes to return a faulty or damaged Good, the Client must first notify the Seller through the Seller's designated "contact us" webpage where the

Seller sets out the requirements relating to the return of Goods or the Client can email: info@itbservice.com

2. Returns will only be accepted provided that:
  1. the Client has complied with the provisions of clause 14.1; and
  2. the Seller has agreed in writing to accept the return of the Goods; and
  3. the Goods are returned at the Client's cost within forty-eight (48) hours of the delivery date; and
  4. the Seller will not be liable for Goods which have not been stored or used in a proper manner; and
  5. the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
3. The Seller undertakes to exchange any undamaged Good purchased from the Seller provided it is returned unused and unopened with proof of purchase within seven (7) days of purchase, however the Seller shall not provide any refund for such purchase. Where undamaged Goods are returned for exchange, the Seller does not refund any packing and postage charges incurred by the Client. Return of undamaged Goods for exchange is at the risk and cost of the Client.
4. Due to copyright regulations, the Seller does not accept opened software. A minimum twenty-five percent (25%) restocking fee is charged on unopened software except Adobe software, which attracts a minimum fifty percent (50%) restocking fee due to it being a special order item.
5. Where the Goods are being returned because of change of mind then a restocking fee will be charged at a rate of fifteen percent (15%) for unopened Goods and thirty-five percent (35%) for opened Goods.
6. The Seller does not take responsibility if the Goods are returned in a damaged condition. Components at risk of damage from freighting should be bubble wrapped and returned in the original static bags.
7. Non-stocklist items or Goods made to the Client's specifications are under no circumstances acceptable for credit or return.

#### **16. Hardware Compatibility**

1. The Seller is not responsible for the compatibility and/or hardware configuration of the Client's components. Due to the different configurations, the Seller does not guarantee a component works with the Client's system. The Seller endeavours to provide as much information on each component as possible but the final decision is the Client's to verify it works on their system. If the component is incompatible it does not mean it is faulty.

#### **17. Warranty**

1. Subject to the conditions of warranty set out in clause 17.2 the Seller warrants that if any defect in any workmanship of the Seller becomes apparent and is reported to the Seller within the respective timeframe of the date of delivery (time being of the essence), then the Seller will either (at the Seller's sole discretion) replace or remedy the workmanship (parts and labour):
  1. up to one (1) years warranty period as agreed to between the Seller and the Client; or
  2. where an extended warranty has been purchased then the period shall be three (3) years.
2. The conditions applicable to the warranty given by clause 17.1 are:
  1. the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:

1. failure on the part of the Client to properly maintain any Goods; or
  2. failure on the part of the Client to follow any instructions or guidelines provided by the Seller; or
  3. any use of any Goods otherwise than for any application specified on a quote or order form; or
  4. the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
  5. fair wear and tear, any accident or act of God.
2. the warranty shall cease and the Seller shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Seller's consent.
  3. in respect of all claims the Seller shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.
3. For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods. This warranty period may vary between twelve (12) months and five (5) years and is brand and/or product dependent.
  4. The Client acknowledges and accepts that the Seller shall not warrant any over clocked components used outside the manufacturer's safe operating parameters.

#### **18. Consumer Guarantees Act 1993**

1. If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by the Seller to the Client.

#### **19. Intellectual Property**

1. Where the Seller has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of the Seller.
2. The Client warrants that all designs, specifications or instructions given to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.
3. The Client agrees that the Seller may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Seller has created for the Client.

#### **20. Default and Consequences of Default**

1. Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
2. If the Client owes the Seller any money the Client shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Seller's collection agency costs, and bank dishonour fees).

3. Without prejudice to any other remedies the Seller may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Seller may suspend or terminate the supply of Goods to the Client. The Seller will not be liable to the Client for any loss or damage the Client suffers because the Seller has exercised its rights under this clause.
4. Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable if:
  1. any money payable to the Seller becomes overdue, or in the Seller's opinion the Client will be unable to make a payment when it falls due;
  2. the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  3. a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

## **21. Cancellation**

1. The Seller may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice the Seller shall repay to the Client any money paid by the Client for the Goods. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.
2. In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Seller as a direct result of the cancellation (including, but not limited to, any loss of profits).
3. Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

## **22. Privacy Act 1993**

1. The Client authorises the Seller or the Seller's agent to:
  1. access, collect, retain and use any information about the Client;
    1. (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
    2. for the purpose of marketing products and services to the Client.
  2. disclose information about the Client, whether collected by the Seller from the Client directly or obtained by the Seller from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
2. Where the Client is an individual the authorities under clause 22.1 are authorities or consents for the purposes of the Privacy Act 1993.
3. The Client shall have the right to request the Seller for a copy of the information about the Client retained by the Seller and the right to request the Seller to correct any incorrect information about the Client held by the Seller.

## **23. Unpaid Seller's Rights**

1. Where the Client has left any item with the Seller for repair, modification, exchange or for the Seller to perform any other service in relation to the item and



the Seller has not received or been tendered the whole of any monies owing to it by the Client, the Seller shall have, until all monies owing to the Seller are paid:

2. a lien on the item; and
3. the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
4. The lien of the Seller shall continue despite the commencement of proceedings, or judgment for any monies owing to the Seller having been obtained against the Client.

#### **24. General**

1. The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
2. These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Auckland courts of New Zealand.
3. The Seller shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Seller of these terms and conditions (alternatively the Seller's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
4. The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Seller nor to withhold payment of any invoice because part of that invoice is in dispute.
5. The Client agrees that the Seller may amend these terms and conditions at any time. If the Seller makes a change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for the Seller to provide Goods to the Client.
6. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party. In the case of a force majeure event causing a delay of more than thirty (30) days, the Seller may terminate this agreement by giving at least thirty (30) days' notice to the Client.
7. The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.