

# New Zealand Computing Solutions Ltd

## Terms of Trade

The terms of trade set out below govern all of the supplies of goods and services from New Zealand Computing Solutions Ltd ("NZCS") to you. They will replace any terms and conditions contained in any document used by you and purporting to have contractual effect, and your acceptance of any goods or services from NZCS indicates your acceptance of these terms of trade.

### **1. Price & Order**

- 1.1 Unless otherwise stated all prices quoted are exclusive of Goods and Services Tax, freight, insurance or handling charges. The customer shall pay Goods and Services Tax, freight, insurance or handling charges in addition to the quoted price.
- 1.2 The Company reserves the right to revise its prices without notice at any time prior to accepting an order. The receipt of an order by the Company from a Customer does not constitute acceptance by the Company.
- 1.3 The Company reserves the right to refuse to accept any order or any part order for any reason whatsoever.
- 1.4 The prices quoted may be revised by the Company subsequent to accepting an order in the event of any occurrence affecting delivery caused by war, Government action, variation in Customs duties, increased shipping charges, increase in the price of the goods or services supplied to the Company and any other matter beyond the control of the Company. In that event the Customer shall have the right to withdraw its order.
- 1.5 All backorders at the time of any price change will reflect the new price. 1.6 Where goods or services are supplied to the Customer in instalments each instalment will comprise a separate contract and shall be paid for as if it were a separate order.

### **2. Delivery and risk**

- 2.1 All claims for shortage or damage during delivery must be made to the carrier within 7 days of the date of delivery. Where goods appear to be damaged or missing you must contact the carrier and NZCS immediately.
- 2.2 NZCS will make every effort to ensure delivery of goods, or performance of services, is on time but will not be liable to you for any loss or damage arising in any way from any delay in delivery or performance.
- 2.3 You are responsible for insurance and risk in the goods from the time they leave NZCSs Premises.

### **3. Payments and Property**

- 3.1 Unless NZCS has agreed to extend credit to you, you must pay for the goods or services before supply, and you will not be considered to have paid until the payment has been fully cleared through the banking system into NZCSs bank account.
- 3.2 Where NZCS has agreed in writing to extend credit to you, you must pay in full on the 20th of the month following the dispatch of an invoice. If you have not paid in full by the due date, NZCS may charge you interest compounding monthly on the unpaid overdue balance at the rate of 2% per month (min \$20) and NZCS may at its option suspend delivery of further goods or performance of further services until the account is paid.
- 3.3 Property and ownership in goods, whether in their original form or incorporated or attached to another product, will not pass to you but will remain with NZCS until NZCS receives payment in full of the purchase price of the goods and all other amounts that you owe to NZCS for any reason.

- 3.4 The goods shall be stored separately and in a manner to enable them to be identified and cross-referenced to particular invoices.
- 3.5 Unless otherwise notified in writing, you are authorised to sell the goods in the ordinary course of your business, but you must keep the proceeds of any goods sold in separate account in trust for NZCS.
- 3.7 All payments shall immediately become due to NZCS if you become insolvent, commit any act of bankruptcy, or if a receiver, liquidator or statutory manager is appointed over any of your assets or undertaking, or if you make or attempt to make an arrangement or composition with creditors.
- 3.8 The Customer shall pay in full for any goods or services supplied without deduction or off-set.
- 3.9 The Company may refuse to supply any further goods or services and/or grant further extensions of credit while any overdue amounts owing to the Company remain unpaid.
- 3.10 If the Company agrees to accept the return of goods (other than defective goods) it shall be entitled to withdraw any credit facilities at any time without notice.
- 3.11 The Company may charge a restocking fee of up to 10% of the invoiced price of the goods returned. This is levied at the Company's absolute discretion.
- 3.12 Whenever the Customer is in default of payment or any account due to the Company, the Customer will pay all the costs of the Company (as between Solicitor and Client, Debt Collectors fee) of and incidental to any legal proceedings. For which the Company may take for the purpose of obtaining any monies to it or enforcing the Company's rights, powers and remedies under these terms of trade.
- 3.13 The Customer grants the Company the right to enter upon the Customers premises where such goods are located or where the services were performed to take possession of the goods or to prevent the Customer from having the benefit of the services performed by the Company while any overdue amounts owing to the Company remain unpaid by the Customer. The Company shall not be liable in any manner whatsoever for any damage or any such loss that results from such repossession, prevention of use of the services or entry onto the premises. The Customer hereby grants the Company an irrevocable license to enter the Customers premises at any time for the purpose of this clause.

#### **4. Security for Payment**

- 4.1 If at any time the Company considers that a Customers credit is unsatisfactory, the Company may require security for payment and suspend its performance of the contract until sufficient security is provided by the Customer. All costs or expenses incurred by the Company as a result of such suspension and recommencement shall be payable by the Customer on demand.

#### **5. Goods Returned for Credit**

- 5.1 NZCS may at its discretion accept the return for credit of goods, other than books, printers, or licensed software, which are not defective provided that they are returned within 14 days of invoice date, freight and insurance prepaid in original packing in as new and saleable condition, with a copy of the original purchase invoice and a note of the return authorisation number.

#### **6. Cancellation**

- 6.1 Without prejudice to any other rights that the Company may have against the Customer, the Company may cancel this contract if the Customer fails to make full payment of any invoices by the due date for payment.

- 6.2 The Company may also cancel this contract without notice if the Customer takes any steps for its liquidation, request removal from the Registrar under the Companies Act 1993, or proposes any amalgamation under the Companies Act 1993 or any equivalent analogous procedures or commits an act of bankruptcy or is unable to pay its debts as they fall due.
- 6.3 The Customer may not cancel this contract except upon full payment to the Company of the value of goods and services provided to the Customer at the date of termination, together with any non-recoverable costs (including special, incidental and consequential damages and loss of profit attributable to the cancellation) and all expenses in respect of the goods or services for which the Company are committed to incur and pay.

## **7. Warranty**

- 7.1 Goods are subject to manufacturers' warranties only, unless the Customer is otherwise notified in writing by the Company and as such the Company will pass on the benefits of those warranties to the Customer.
- 7.2 Any faulty product should be returned to the Company immediately, whereupon it will be repaired or replaced at the Company's discretion. The warranty is void if the goods have been tampered with, damaged by accident, improper use or incorrect installation. The Company shall not be liable for consequential or special damages under any circumstances.
- 7.3 Where goods are subject to a return to base warranty the Customer is responsible for returning the goods to the Company or the manufacturer (as provided by the warranty) and may be responsible for additional costs (but not limited to) freight.
- 7.4 The Customer cannot claim warranty service if the Customer's account is overdue. The Company reserves the right to withhold or refuse warranty service whilst the Customer's account is in arrears.

## **8. Consumer Guarantees Act 1993**

- 8.1 In circumstances where the Company is deemed to be a supplier if the Customer acquires our goods or services for the purpose of business as defined in the Consumer Guarantees Act 1993, the provisions of the Act do not apply.

## **9. Disclaimer of Liability**

- 9.1 To the maximum extent permitted by law the Company shall not be liable for or in respect of any loss or damage suffered by the Customer arising from or incidental to
- 9.1.1 riot, civil commotion, lock-out, trade or union dispute, labour disturbance, acts of malicious persons, stoppage or restraint of labour from whatever cause.
  - 9.1.2 mechanical accident, breakdown or failure of any nature of the Customer's computer system (including hardware and software)
  - 9.1.3 any existing or latent defect in, or any damage to any hardware or software that is caused by or results from or contributed to by any other party other than the Company
  - 9.1.4 any other cause whatsoever outside the reasonable control of the Company

## **10. Limitation of Liability**

- 10.1 In addition to clause 9.1 above it is understood and accepted by the Customer that should the Company (notwithstanding the provisions of these terms and conditions of trade) be found liable for any loss or damage sustained or suffered by the Customer whether such loss or damage arises from the breach of the Company of any contractual or statutory provisions, is due or arises from any negligence or act of omission on the part of the Company, its servants or agents in any respect, the liability of the Company hereunder and at common law shall be limited to sum not exceeding the aggregate amount paid by the Customer to the Company for providing the services only.

**11. General Conditions**

- 11.1 NZCS reserves the right to change these terms of trade from time to time.
- 11.2 If NZCS fails to enforce any terms or to exercise its right under these terms of trade at any time. NZCS has not waived those rights.
- 11.3 If any provision of these terms of trade is held to be invalid or unenforceable for any reason, the remaining provisions shall remain in full force and effect and the parties shall adjust their respective rights and obligations in accordance with the spirit and intent of the parties as shown by these terms of trade.

**12. Personal Guarantee of Company Director or Trustee**

- 12.1 If the Customer is a company, or Trust, the Director(s) or Trustee(s) jointly and severally personally guarantee and undertake as principal debtors to the Company the payment of any and all other monies now and hereafter owed by the Customer to the Company. Any personal guarantee made by any other party shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in this contract. The Customer and the guarantors shall be jointly and severally liable under the terms and conditions of this contract.

**13. Indemnity**

- 13.1 The Customer shall indemnify the Company against all claims in respect of any loss or damage including consequential loss sustained by a third party howsoever caused after the receipt of goods or services by the Customer.

**14. Governing Law**

- 14.1 This contract shall be governed by New Zealand law and the Customer and the Company submit to the exclusive jurisdiction of the New Zealand Courts.

**15. Privacy**

- 15.1 The Customer noting the requirements under the Privacy Act 1993 authorises and directs that the Company can seek and obtain from and supply any information concerning the credit or business standing of the Customer to any other person whether trader, merchant, firm, organisation, company or any agency or source whatever including any credit agency or association or the like and directs any such person to supply and receive and record such information to and from the Company.

**16. Personal Property Securities Act 1999 ("the Act")**

- 16.1 The Customer grants a security interest (as that term is defined in the Act) to the Company over all goods presently or in the future supplied to the Customer by the Company until the purchase price of each good and all amounts owing to the Company are paid in full.
- 16.2 On the request of the Company the Customer shall promptly execute any documents and do anything else required by the Company to ensure the security interest created under these conditions constitutes a perfected security interest (as that term is defined in the Act) over the goods supplied to the Customer by the Company, including
  - 16.2.1 executing any amendment to these conditions as reasonably required by the Company,
  - 16.2.2 executing any replacement or additional security document(s) and
- 16.2.3 providing any information to the Company to enable it to complete a Financing Statement or a Financing Change Statement

- 16.3 The Customer shall not agree to allow any person to file a Financing Statement over any of the goods supplied pursuant to these conditions without the prior written consent of the Company and the Customer shall notify the Company immediately if it becomes aware of any person taking any step to file a Financing Statement against any goods which are supplied pursuant to these conditions.
- 16.4 The Customer irrevocably appoint the Company to be your attorney to do anything which you agree to do under this agreement and anything which the attorney thinks desirable to protect the Company's interest under this agreement and you ratify anything done by the attorney under this clause.
- 16.5 The Customer waives the right to receive a copy of the verification statement confirming registration of a Financing Statement or a Financing Change Statement to the security interest created by this agreement.
- 16.6 The Customer agrees sections 114(1)(a), 133 and 134 of the Act shall not apply to this agreement or the security under this agreement. 16.7 The Customer agrees that none of the Customers rights as a debtor under section 11, 119, 120(2), 121, 125, 126, 127, 129, 131, and 132 shall apply to this agreement.

## **17. Intellectual Property**

- 17.1 All Intellectual Property shall remain the property of the Company and any Supplier entitled thereto and neither the Company nor its Suppliers transfer any right, title or interest in the Intellectual Property to the Customer.
- 17.2 The Customer shall not use any trademarks which are the property of the Company or its Suppliers, or any similar words or marks, or any combination of words which includes any of those trademarks or any similar words or marks, except to the extent expressly authorised by the Company in writing.
- 17.3 The Customer agrees to only dispatch any goods supplied by the Company under the trade marks under which they are supplied, and under no circumstances shall the Customer apply any trade marks to any product which is not a genuine branded product supplied to the Customer by the Company.
- 17.4 The Customer will not cause or permit anything which may interfere with, damage or endanger the trade marks or the intellectual property of the Company or its Suppliers, or assist or allow others to do so.
- 17.5 The Customer undertakes to advise the Company immediately when it becomes aware of any unauthorized use or attempted use by any person of the trade marks or other intellectual property rights of the Company or its Suppliers.
- 17.7 In the case of the Customers account with the Company being terminated the Customer shall immediately discontinue use of any of the trade marks which are the property of the Company or its Suppliers in any sign or advertising and thereafter shall not use those trademarks directly or indirectly in connection with its business.

## **18. Customer Information and Guarantee**

- 18.1 The Customer warrants that the information supplied to the Company is true and correct and the Customer acknowledges that the Company will rely upon the correctness of the representations and information the Customer has provided. The Customer further undertakes to inform the Company of any changes in the information.

## **19. Non Waiver**

- 19.1 If the Company fails to enforce any terms or to exercise its rights under these terms of trade at any time, the Company has not waived those rights.

## **20. Severability**

- 20.1 If any provision of these terms of trade is held to be invalid or unenforceable for any reason, the remaining

provisions shall remain in full force and effect and the parties shall adjust their respective rights and obligations in accordance with the spirit and intent of the parties as shown by these terms of trade.