

## TERMS AND CONDITIONS

(All sales to customers are subject to these terms of business unless agreed otherwise in writing by both parties)



## 1. TERMS OF BUSINESS

1.1 On the earlier of:

1.1.1. acceptance by the Customer of a quotation provided by Mi-IT Limited (the Company); and

1.1.2. delivery by the Company to the Customer of any products or services requested by the Customer,

both the Customer and Company acknowledge and agree that all products and services provided by the Company to the Customer shall be provided on and subject to the following terms and conditions ("Terms").

1.2 The Company may vary these Terms from time to time, including by way of Supplemental Terms, as provided on the Company website: [www.miit.co.nz/tc](http://www.miit.co.nz/tc) and/or provided directly to the Customer. A current copy of the overall Terms can be found at [www.miit.co.nz/tc](http://www.miit.co.nz/tc) or provided to the Customer on request. Any amendment or variation to these Terms will apply from the date of the next order placed by the Customer.

1.3 The Customer expressly agrees that, in the case of any conflict between these Terms and any terms and conditions that the Customer may supply or attempt to have apply, these Terms shall prevail. Without limiting the generality of the foregoing:

1.3.1. the Customer's standard terms of business or trade or any other agreement with the Customer ("Customer Terms") will not apply or vary these Terms unless the Customer Terms are signed by a member of the Company's senior management and the Customer Terms specifically state that the Customer Terms override these Terms. For clarity, but not as an exhaustive list, the following methods of forwarding Customer Terms shall not constitute in any way acceptance by the Company of the Customer Terms:

1.3.1.1. fulfilling an order where the Customer's purchase order contains Customer Terms.

1.3.1.2. the Customer attaching Customer Terms to any payment or payment documentation.

1.3.1.3. any letter to the Company attaching Customer Terms; or

1.3.1.4. the inclusion or attachment of the Customer Terms in the body of an email or other form of communication.

1.4 These Terms shall remain in force until terminated by one party to the other in writing. Termination of these Terms shall not prejudice the Company's accrued rights and remedies against the Customer.

## 2. ACCEPTANCE

2.1 The Customer is taken to have exclusively accepted and both parties are immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for, and the Company accepts such order (verbally and/or in writing), and the Company supplies, and the Customer accepts, the Services supplied by the Company in accordance with the Customer's order.

2.2 These terms and conditions may only be amended with the Company's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Company.

2.3 None of the Company's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Company in writing nor is the Company bound by any such unauthorised statements.

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2.4 Once accepted by the Customer, the Company's written quotation shall be deemed to interpret correctly the Customer's instructions, whether written or verbal. Where verbal instructions only are received from the Customer, the Company shall not be responsible for errors or omissions due to oversight or misinterpretation of those instructions.

2.5 Any advice, recommendations, information, assistance or service provided by the Company in relation to Services supplied is given in good faith, is based on information provided to the Company, and the Company's own knowledge, and experience. Whilst it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Services, human error is possible under these circumstances, and the Company shall make all effort to offer the best solution to the Customer.

2.6 The Customer authorises the Company to make required diagnostic, repairs, upgrades or replacements as specified herein, and agree to pay all charges in relation thereto. Where further Services are authorised, the Customer agrees to pay the hourly rate, charges and/or other costs specified in the invoice.

2.7 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.

### 3. GENERAL

3.1 If a particular provision of this agreement is terminated or held by a Court of law or administrative body of competent jurisdiction to be illegal, void, or unenforceable, such determination shall not impair the enforceability of the remaining parts of this agreement which shall remain in force.

3.2 Unless otherwise stated, the Company's quotes shall exclude GST, courier fees, installation fees, support fees and are subject to change without notice.

3.3 The parties acknowledge that this contract constitutes a whole of the agreement between the parties and the Customer acknowledges that it has not relied upon any representation or assurances by the Company other than those contained herein.

3.4 Each party agrees to execute and deliver any documents, including transfers of title, and to do all things as may reasonably be required by the other party to obtain the full benefit of this agreement according to its true intent.

3.5 Customer Terms & Conditions of Business ("TCOB") do not supersede this Agreement unless the TCOB are specifically signed by a member of the Company Management and Company Management specifically acknowledge this Agreement no longer applies. For clarity, but not an exhaustive list, the following methods of forwarding TCOB cannot be interpreted as specific agreement to TCOB:

- Fulfilling an order where the Customer Purchase Order contains TCOB, or
- Attaching TCOB to payment,
- Letter to Company showing TCOB, or
- Including TCOB as an attachment to, or in the body of an email, or
- Referring the Company to TCOB in any of the above forms of communication.

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#### 4. RETURNS

4.1 Any returns of product supplied will be subject to the returns policy of the Manufacturer or importer of the product. The Company is not able to enhance the terms available.

4.2 If the Company agrees to accept the return of goods (other than defective goods), it shall be entitled to charge a restocking fee equal to **30%** of the invoiced price of the goods returned.

#### 5. CONSUMER GUARANTEES ACT ("CGA")

5.1 It is a condition of sale that the Consumer Guarantees Act 1993 will not apply to any goods acquired for business purposes. The Customer acknowledges that all the Company's software, services and products under this agreement are provided for business purposes and agrees that the Consumer Guarantees Act does not apply to their supply by the Company or acquisition by the Customer under this agreement.

#### 6. WARRANTIES

6.1 No warranty or condition will be applied against the Company by any statute, at common law or otherwise and no representation, expressed condition, warranty or variation of these terms shall be binding on the Company unless it is in writing and signed for or on behalf of the Company.

6.2 The Customer is not entitled to rely on, and the Company make no warranties in respect of:

- (a) The continuous availability of communications facilities to the Customer (even where required for particular services or support): or
- (b) Problem resolution: or
- (c) Any support or labour being uninterrupted or error-free

6.3 The Customer agrees to take adequate precautions against damage to its operation that could be caused by interruption or errors, including making appropriate data backups, the Company cannot be held responsible for any loss of the Customer's data, and is not liable for any direct, indirect, consequential, incidental, special, punitive or other damages whatsoever (including without limitation, damages for loss of business profits, business interruption or loss of business information), even if Company has been advised of the possibility of such damages.

6.4 The Customer shall indemnify the Company and its affiliates and hold the Company and its affiliates free and harmless from any costs, expenses, loss or damage incurred by the Company or its affiliates as a result of the Customer or any purchase from the Customer failing to comply with obligations contained in this section.

6.5 The Customer agrees that vendor (manufacturer) warranties do not include restoration of the system to the state prior to failure, only to the configuration and status of when the vendor shipped the product/s from the factory. Any additional work required by the Company to reinstate the system to its previous state (pre-failure) will be charged separately, and the Customer agrees to pay for this.

6.6 The Customer shall indemnify the Company and its affiliates and hold the Company and its affiliates free and harmless from any costs, expenses, loss or damage incurred by the Company or its affiliates as a result of the Customer on selling or reselling products or services of the Company. If the Customer on sells or resells products or services of the Company, the Customer will take adequate precautions to ensure that the Company is protected and excluded from any possible liabilities or costs and shall reimburse the Company if such events occur.

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#### 7. CYBER SECURITY WARRANTY

The Company takes reasonable measures to ensure the security of its systems and protect against cyber security breaches. However, the Company does not warrant that its systems are immune to cyber security breaches and shall not be liable for any damages, losses, or expenses resulting from any cyber security breach on the Company or its clients. The Customer acknowledges that it is their responsibility to implement appropriate security measures to protect their own systems and data.

#### 8. LIMITATION OF LIABILITY FOR CYBER SECURITY BREACHES

The Customer agrees to take adequate precautions against damage to its operation that could be caused by interruption or errors. The Company cannot be held responsible for any loss of the Customer's data, and is not liable for any direct, indirect, consequential, incidental, special, punitive or other damages whatsoever (including without limitation, damages for loss of business profits, business interruption or loss of business information), even if the Company has been advised of the possibility of such damages.

In the event of a cyber security breach, the liability if any, of the Company shall be limited to the past 3 months of invoicing for cyber security products that the Company has raised against the Customer. This limitation of liability applies only to the specific products and services related to cyber security and does not affect any other rights or remedies available to the Customer under these terms and conditions or applicable law.

The Customer shall indemnify the Company and its affiliates and hold the Company and its affiliates free and harmless from any costs, expenses, loss or damage incurred by the Company or its affiliates as a result of the Customer or any purchase from the Customer failing to comply with obligations contained in this section.

The Customer agrees that the Company warranties do not include restoration of the system to the state prior to failure / compromise. Any additional work required by the Company to reinstate the system to its previous state (pre-failure) will be charged separately, and the Customer agrees to pay for this.

#### 9. DELIVERY AND RISK

9.1 The Company will endeavour to arrange for supply of goods as quickly as possible, the costs of delivery to be by arrangement between the parties.

9.2 The goods will be at the Customer's risk from delivery.

9.3 All claims for errors or short delivery must be made within seven days of delivery.

9.4 If the Company is organising delivery it is entitled to deliver the goods between 8.00am and 5.00pm on any working day. If the Customer or an agent of the Customer is not present at the delivery site, then the goods may be left and deemed to be delivered and at the Customer's risk from date of delivery.

9.5 When Customer equipment is stored on Company premises, whether for the purpose of storage only or maintenance of the equipment, the equipment is stored at the Customer's risk.

#### 10. INTELLECTUAL PROPERTY

10.1 The Customer acknowledges that the Company (or its supplier) is the sole owner of all Intellectual Property rights relating to or arising out of the goods and services (the "Intellectual Property") and that the Customer must not copy, modify, reproduce, reverse, assemble or reverse compile or permit any other person to do the same to or in respect of the Intellectual Property, and must not make any modification to the Intellectual Property or the packaging except as authorized by these terms.

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10.2 The Customer acknowledges that the Company will own any Intellectual Property rights arising out of the performance of any contract subject to these terms.

#### 11. Mi-IT EMPLOYEES

11.1 The Customer agrees that they will not during the term of this agreement, nor for a period of twelve (12) months thereafter, directly or indirectly approach, offer, contract or otherwise deal with the Company's employees, agents or subcontractors in respect of substitutions of the Company's services, other than with the prior written consent of the Company.

11.2 The Customer agrees that if clause 11.1 is contravened, the Company will be able to invoice the Customer at its current hourly rate the hours that the employee has been employed, contracted, subcontracted or utilised in any way by the Customer and agrees to pay said invoice in accordance with the standard payment terms contained in this contract.

#### 12. CONFIDENTIALITY

12.1 Subject to clause 12.2, both parties agree to treat as confidential the other party's Confidential Information and agree not to divulge it to any third party, without the other party's written consent.

12.2 Both parties agree to:

(a) use the Confidential Information of the other party only to the extent required for the express purpose it was provided.

(b) not copy or reproduce any of the Confidential Information of the other party in any way;

(c) only disclose the other party's Confidential Information to:

- i. employees and contractors who need access to the information and who have agreed to keep it confidential.
- ii. its legal advisers and insurance providers if those persons undertake to keep such information confidential; and

(d) not disclose the other party's Confidential Information to any person not referred to in this clause except with the other party's prior written consent or if required by law, any stock exchange or any Regulator.

12.3 Either party must promptly return or destroy all Confidential Information of the other party in its possession or control at the other party's request unless required by law to retain it.

12.4 Confidential Information excludes information:

(a) generally available in the public domain (without unauthorised disclosure under this agreement);

(b) received from a third party entitled to disclose it;

(c) that is independently developed.

12.5 The Customer agrees to protect all authorisation details, including but not limited to usernames and passwords and agrees that those details shall not be written or stored in any manner which could result in their unauthorised disclosure.

12.6 In the event that the Company requests the Customer to change any password or identifier as part of its Services, the Customer acknowledges that Company recommends that the Customer not use commonly known details such as birthdays and or names.

12.7 The obligations of this clause 15 shall survive termination or cancellation of this agreement.

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### 13. LIMITATION OF LIABILITY

13.1 Subject to and to the extent permitted by applicable law, neither the Company its directors, agents or employees shall be liable for any direct, indirect, consequential or incidental damages (including damages for loss of business profits, business interruption, loss of business information, and the like) arising out of the use or inability to use those products or products or services, or provision of, or failure to provide, support, even if the Company has been advised of the possibility of such damages. The liability of the Company, to the extent that such limitation does not apply, shall in that case not exceed the sum of the invoice relating to goods or service the Customer is making a claim against, whether that liability arises for negligence, breach of warranty or otherwise.

13.2 In any event, the service provider's maximum aggregate liability under or in connection with this agreement shall not exceed the total amount of fees paid by the customer for the monthly service during the 3-month period immediately preceding the event giving rise to the liability.

### 14. ONGOING OBLIGATIONS

14.1 Where the Customer purchases software, or a service agreement, whether from the Company or from a Manufacturer or Vendor and that agreement contains an automatic renewal, it is the responsibility of the Customer to meet that obligation or cancel the agreement within the terms of any such agreement. This obligation survives the termination of these Terms of Business.

### 15. TERMS

This Agreement shall commence on the first day of the month following the Acceptance of this agreement and continue for a period of 25 months and will automatically renew every 24 months unless terminated in writing by the Client 30 days before the end of the initial contracted period.

### 16. PRICE ADJUSTMENTS

#### 16.1 CONSUMER PRICE INDEX (CPI) ADJUSTMENT

The prices for Products and Services shall be adjusted every 12-month cycle based on the percentage change in the Consumer Price Index, as published by Statistics New Zealand.

#### 16.2 THIRD-PARTY SUPPLIER INCREASE ADJUSTMENT

16.2.1 The prices for Products and Services shall be adjusted to reflect any increases in the cost of materials or services from third-party suppliers.

16.2.2 The price adjustment shall be calculated based on the percentage increase in the cost of materials or services as specified by the third-party supplier. The adjusted prices shall be effective from the month that the increases are incurred by the Company.

#### 16.3 REVIEW AND DISPUTE RESOLUTION

16.3.1 In the event of a dispute regarding the price adjustment, both parties agree to engage in good faith negotiations to resolve the matter

16.3.2 Either party may terminate this agreement if the price adjustments result in a price increase exceeding 30 %, provided that 30 days' written notice is given

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## 17. ENTIRE AGREEMENT

17.1 This agreement constitutes the entire agreement between the parties; it supersedes and extinguishes all earlier negotiations, understandings and agreements, whether oral or written, between the parties relating to the sale and purchase of the goods.

## 18. PAYMENT

18.1 Unless otherwise agreed in writing by the Company, full payment for the goods supplied shall be due on the earlier of:

- (a) "Due Date" as per the terms of credit approved for the Customer, or
- (b) Immediately the Customer sells or otherwise disposes of the goods, or
- (c) Immediately upon the commencement of any action or proceedings by or against the Customer, which in the opinion of the Company, might compromise the Customer's credit worthiness.

For the purposes of these terms, "Due Date" will be determined by the terms offered by the Company to the Customer as per the definitions below:

- COD Payment is due prior to delivery or at the time of delivery
- 7 Days Payment is due no later than seven days after the date of the invoice
- 30 Days Payment is due no later than thirty days after the date of the invoice
- 20th of month Payment is due no later than the 20th of the month, in the month following the month of invoice.

18.2 Payment for Products and Services shall be made in full without any deduction, whether by way of set-off, counterclaim, or any other equitable or legal claim on or the Due Date.

18.3 If the Customer fails to pay any amounts due under this agreement on the due date, then the Company may charge two and a half percent (2.5%) per calendar month (and at the Company's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment, calculated from the date on which payment was due until the date payment is actually made by the Customer. The Customer acknowledges that charging of default interest under this clause does not constitute the granting of credit by the Company to the Customer.

18.4 Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment, whether or not the payment is due to the Company) the Company may suspend or terminate the provision of Services to the Customer, (this includes but is not restricted to, cancelling any provision of the Services or retaining/withholding details, passwords, and other information pertaining to the Customer and the Services) and any of its other obligations under the terms and conditions. The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company has exercised its rights under this clause.

18.5 The Company may withdraw credit facilities at any time without notice.

18.6 If the Customer fails to make any payment or perform its obligations or is otherwise in breach of this agreement, the Customer shall be liable for and shall pay to the Company all and any expenses incurred by it in enforcing its rights under this agreement (including full solicitor Court costs and any collection commission) upon demand.

## 19. OWNERSHIP

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19.1 Ownership of goods shall not pass to the Customer until the Customer has paid all that is owing to the Company. Until ownership has passed the Customer holds the goods on behalf of the Company under the following conditions:

The Company is permitted to enter onto the Customer's premises to inspect and/or repossess the goods.

The Company may repossess the goods at any time after:

- (a) the Due Date for payment of any of the goods; or
- (b) the commencement of the winding up of the Customer; or
- (c) the coming of an act of bankruptcy by the Customer; or
- (d) any attempt by the Customer to enter into a debt compromise arrangement with the Customer's creditors.

If the Customer sells the goods to a third party, then the Customer is accountable to the Company for all the proceeds derived from such a sale and shall hold such proceeds on trust for the Company in a separate bank account. In all such dealings the Customer shall be deemed to be trustee of all proceeds for the Company as beneficiary.

If the Customer manufactures, intermingles or deals with the goods in such a manner that they become an integral part of any other object then the

Customer shall be deemed to do so as agent of the Company and ownership of the goods will remain with the Company as principal.

## 20. PERSONAL PROPERTY SECURITIES ACT ("PPSA")

20.1 Upon signing these terms the Customer acknowledges that:

- (a) These terms are a security agreement for the purpose of section 36 of the PPSA: and
- (b) A security interest is taken in all goods previously supplied by the Company to the Customer (if any) and all goods that will be supplied in the future by the Company to a Customer during the continuance of the parties' relationships.

20.2 The Customer undertakes to:

- (a) Enter into a General Security Agreement (as approved by the Auckland District Law Society), and to sign any further documents and/or provide any further information which the Company may reasonably require to register a financing statement or financing charge statement on the Personal Property Securities Register;
- (b) Give the Company not less than 14 days prior written notice of any proposed change in the Customer's name and will use its best endeavours to ensure that a financing change statement is registered disclosing its new name; and
- (c) Immediately advise the Company of any material change in its business practices of selling the goods which would result in a change of the nature of proceeds derived from such sales.

20.3 Unless otherwise agreed to in writing by the Company, the Customer waives its rights to receive a verification statement in accordance with section 1.

## 21. GUARANTEE

21.1 In consideration of the Company approving this account application form and supplying goods to the Customer at the guarantor's request, the guarantor:

- (a) Guarantees payment of all monies due and owing to the Company by the Customer from time to time and compliance by the Customer with the terms and conditions of this application.
- (b) Indemnifies the Company against any loss the Company may suffer should the Customer's contract with the Company be lawfully disclaimed or abandoned by liquidator, receiver or other person.

The guarantor covenants with the Company that:

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(a) No release, delay or other indulgence given by the Company to the Customer whereby the guarantor would have been released had the guarantor been merely a surety, shall release prejudice or affect the liability of the guarantor as a guarantor or as indemnifier.

(b) As between the guarantor and the Company the guarantor may for all purposes be treated as the Customer and the Company shall be under no obligation to take proceeding against the Customer before taking proceedings against the guarantor.

(c) The guarantee is for the benefit of the Company and may be enforced by any person entitled for the time being to receive the benefit of the agreement in place of the Company

(d) Should there be more than one guarantor their liability to the guarantee shall be joint and several.

The Guarantors acknowledge that they fully understand the extent and nature of their liability as set out in clause 7 hereof and further acknowledge that they are entitled to take independent legal advice in this respect but have declined to do so.