

## General terms and conditions for provision of products and services

These General Terms and Conditions set out the terms and conditions on which Technology Solutions provides Products and Services to you except to the extent they have been specifically modified on the face of this Agreement

### Definitions

**Technology Solutions** means Wairarapa Computer Services Limited or any of its subsidiaries, “we”, “our” or “us”.

**“SOW”** means a statement of work, service schedule or addendum, quote or order form

**“Services”** means all services which are supplied by us to you (or any of your Related Companies) and includes services described in any Statement of Work (SOW) or written agreement with you and any Products provided as part of a Service.

**“Products”** means all hardware or related equipment (including any Software) and all other goods or property which are supplied by us to you (or any of your Related Companies).

**“Software”** means all system software, application software, software tools and software utilities which are supplied by us to you (or any of your Related Companies) and includes any software provided as part of a Product or Service.

### The Agreement

- 1.1. We may vary this Agreement from time to time by notice in writing to you and any such amendment shall be binding upon receipt by you or any later date stated in the notice.
- 1.2. We will use all reasonable endeavours to meet the timings agreed for completion of the installation of services and the delivery of products. You agree that our ability to meet these dates may depend on you providing us with any required information, participating promptly in reviewing material we have produced or otherwise providing us with the inputs we need from you.

### Supply of Products & Services

- 2.1. We will supply the Products and/or Services to you as agreed between us in writing or as set out in a SOW. Any amendment to Product or Service orders must be agreed by the parties in writing.
- 2.2. We will comply with your reasonable on-site policies and procedures where applicable to the Services, and where these are notified to us in advance. We reserve the right to increase our charges where any policy causes us to incur additional costs
- 2.3. We will use all reasonable endeavours to meet the timings agreed for completion of the Services. You agree that our ability to meet these dates may depend on you providing us with any required information, participating promptly in reviewing material we have produced or otherwise providing us with the inputs we need from you.
- 2.4. We will comply with your reasonable on-site policies and procedures where applicable to the Services, and where these are notified to us in advance. We reserve the right to increase our charges where any policy causes us to incur additional costs.

### **Delivery of Products**

- 3.1 Unless otherwise agreed in writing, the Products will be delivered on the delivery date and at the location specified in the relevant SOW, and you agree to take possession of the Products at that time. We reserve the right to deliver the Products by instalment.
- 3.2 Where delivery is delayed for any reason, we use best endeavours to provide you notice of the delay. We will not be liable to you or any other party for any loss sustained due to delay and we reserve the right to cancel delivery of Products or instalments without prejudice to our rights to recover all sums owing to us in respect of deliveries already made.
- 3.3 In the circumstance where we store Products for you or on your behalf and you fail to collect or accept any Product by the delivery date specified, you agree to pay our reasonable storage costs until you collect or accept those Products.

### **Responsibility and Title**

- 4.1 Responsibility for the Products we supply to you will pass to you on delivery. Title in Products supplied by us will not pass to you until you have fully paid us for the Products.
- 4.2 Until title to the Products passes from us to you in respect of any Products we supply you, you will:
  - (a) be deemed to be acting as our bailee in respect of those Products;
  - (b) if required by us, store those Products in a manner that makes it clear that they are still owned by us, and keep them separate from any other Products;

### **Security Interest**

- 5.1 You:
  - (a) grant us a security interest in the Products (and the proceeds of sale of the Products) as security for all of your obligations to us (including the purchase price for the products), which we may register or perfect in any means possible in the applicable jurisdiction to ensure that we have an enforceable security interest against you and the Products (and any proceeds of sale of the Products);
  - (b) agree to do all things and execute or arrange for execution all documents we require to ensure we perfect a security interest in the products in the relevant jurisdiction;
  - (c) will indemnify us for any costs we incur in registering, maintaining, discharging and/or enforcing the security interest created by these terms;
  - (d) agree that sections 114(1)(a), 117(1)(c), 133 and 134 of the Personal Property Securities Act 1999 (PPSA) shall not apply on the enforcement by us of any security interest created or provided for by these General Terms to which Part 9 of the PPSA applies. You waive any rights you may have under sections 116, 119, 120(2), 121, 125, 129 and 131 of the PPSA on such enforcement, and you waive any right you have under section 148 of the PPSA to receive from us a copy of any financing statement, financing change statement or verification statement that is registered, issued, or received at any time in relation to these General Terms; and

- (e) agree not to assign, charge, encumber, mortgage, or permit any lien to arise over, or any security interest (other than ours) to attach to the products, without our prior written consent.

## **Charges**

- 6.1 You must pay the full amount of all charges at the rate or rates specified for the service in our applicable pricing document as in effect from time to time (“the Charges”) except to the extent any of the Charges have been specifically amended on the face of this Agreement in which case that becomes the applicable Charge.
- 6.2 We may amend the Charges at any time by notice in writing to you and any such amendment shall be binding upon receipt by you or any later date stated in the notice.
- 6.3 Any work which we undertake at your request and is outside the Service will be paid for by you at our current rates.
- 6.4 Goods and services tax is not included in the Charges and are payable by you in addition to the Charges.

## **Term and termination**

- 7.1. The Term of this Agreement is the term specified in this Agreement unless extended by agreement in writing signed by you and by us (in which case reference to the “Term” includes any extended term).
- 7.2. If the Term is:
- (a) Monthly, this Agreement will continue from month to month until it is terminated by either party on one month’s notice in writing to the other; and
  - (b) If the Term is for a specified period, this Agreement will terminate at the end of that period. However, if you continue to use the Service after the end of the Term, the Service will continue on a monthly basis at the Charges then currently in effect for monthly contracts.
- 7.3 If you stop using the Service before the end of the Term then you must pay a disconnection fee equal to the balance of the Charge due under this Agreement had the service remained in place for the entire Term.
- 7.4 From time to time it is necessary for Technology Solutions to purchase annual licences from 3<sup>rd</sup> parties in order to provide the Service. The cost of these licences is amortised in the monthly fee. In the event that the customer terminates the service before the fee is fully amortised the customer will be liable for any outstanding fees.

## **Payment**

- 8.1. You must, without deduction or set off of any kind, pay the Charges for the Service by the 20th of the month following the date of each invoice (“the Due Date”).
- 8.2. If you do not pay all of the Charges by the Due Date, then you will pay:
- (a) Default interest on all sums owing for the period from the Due Date to and including the date the Charges are paid. The default interest rate will be 2% per annum above the rate charged by our bankers for unsecured overdraft facilities as at the Due Date; and

- (b) Our legal and other fees and expenses (including costs on a solicitor own client basis) incurred in respect of the recovery of any overdue Charges.
- 8.3 If any sum payable by you under this Agreement remains unpaid for 14 days after the Due Date, we may discontinue the Service without giving notice to you. Discontinuance of the Service will not:
  - (a) Relieve you from having to pay any sum due and owing to us, and will not remove your obligation pursuant to Clauses 7 and 8 to pay the Charges for the Service to the end of the Term; or
  - (b) Restrict any other right or remedy of Technology Solutions.
- 8.4. We shall use its best endeavours to resolve any dispute it may have with you concerning the Charges within 60 days of being advised by you that there is a dispute. You will make payment of all amounts which are not disputed in good faith by the Due Date.

### Notices

- 9.1. A notice shall be deemed to have been validly given if it is in writing (which includes facsimile and e-mail) and is sent to the relevant party at any address, facsimile number or e-mail listed in this Agreement or subsequently notified by either party to the other in writing and shall be deemed to have been duly given or made:
  - (a) If by mail, on the second working day after being posted by mail correctly addressed and stamped;
  - (b) If by hand, on personal delivery to the recipient or to such address; and
  - (c) If by e-mail, when transmitted to the correct address with no indication of incomplete transmission to such address,

**PROVIDED THAT** if a notice is given by hand, facsimile or e-mail after 5PM on a working day or on a day which is not a working day it shall be deemed to have been received at 9AM on the next following working day.
- 9.2. A notice sent by e-mail from a party's e-mail domain that states on its face that it is from a particular person shall be "signed" by that person for the purposes of this Agreement.

### Consumer guarantees act

- 10.1 You acknowledge that:
  - (a) You are acquiring, or holding yourself out as acquiring, the Services for the purposes of a business; and
  - (b) The provisions of the Consumer Guarantees Act 1993 do not apply to this Agreement.

### No representations and warranties

- 11.1. We shall not be bound by any representation, warranty, description or condition as to suitability, fitness or otherwise (whether express or implied) except as stated in these Terms or as stated in writing by an authorised officer of Technology Solutions.

- 11.2. No dealer, agent, representative or employee is authorised to make any such representations, warranties, descriptions or conditions unless they are in writing and signed by an authorised officer of Technology Solutions.
- 11.3. You acknowledge that you are relying on your own assessment of the Service to be provided.

### **Limits of liability**

- 12.1. We will attempt to remedy any fault in the Service reported by you as soon as reasonably possible.
- 12.2. Subject to the provisions of this Clause 12, Technology Solution will give a credit to you for a period (if any) during which the Service did not function due to a fault for which we are responsible. The credit will be equal to the Charge applicable in relation to the affected Service for the period beginning at the time you notify the fault to Technology Solutions until the Service is restored.
- 12.3. No claim may be made by you against us of any kind or nature unless you notify us in writing within 30 days of the date on which the claim first arises.
- 12.4. Except as provided in this Clause 12, we will not be liable to you in any way whatever and however arising (whether in contract, tort, or otherwise, and whether for direct, indirect, consequential or any other type of loss (including loss of profits, claims against by third parties, and any type of loss or damage resulting from failure of the Service).
- 12.5. In all circumstances of whatever nature and however arising, our maximum liability to you (including for a credit) will be no more than \$1,000 for each event or series of related events (subject to a maximum liability of \$3,000 in any calendar year).

### **Assignment**

- 13.1. You cannot transfer your benefits and obligations under this Agreement without our prior written permission which will not unreasonably be withheld.
- 13.2. We may assign its benefits and obligations under this Agreement

### **Force majeure and delay in the provision or standard of service**

- 14.1 We shall not be in breach of this Agreement and shall not be liable for any delay or reduction in the Service (or inability to provide the Service) caused by any of the following:
- (a) force majeure (including fire, earthquake and adverse weather conditions);
  - (b) late delivery of equipment or materials to us for reasons beyond our control;
  - (c) industrial or legal action which obstructs or prevents continuation of the Service;
  - (d) operational and technical difficulties such, internet and power outages and maintenance, outages beyond our control;
  - (e) any other cause beyond the control of Technology Solutions.

### **Customer information**

- 15.1 You authorise us to:
- (a) collect and store information about you;

- (b) use any information we hold about you; and
- (c) disclose information about you to any person in the course of Technology Solutions business, including credit assessment, debt collection, marketing and for assessing customer satisfaction.

### **Confidential information**

- 16.1 Both of us may only use each other's confidential information for the proper performance of respective obligations under these General Terms. Each of us must keep the other's confidential information secure in accordance with usual security practices.
- 16.2 Each of us must not disclose each other's confidential information, and will ensure that their employees, contractors and agents do not disclose it, to any other person except as required for the proper performance of respective obligations under these General Terms and on a confidential basis.
- 16.3 Each of us will inform the other as soon as possible if they:
  - (a) become aware or suspect that there has been any unauthorised disclosure of the confidential information; or
  - (b) are required by law to disclose the confidential information.
- 16.4 At the end of any contract or if requested earlier, each of us will return or destroy (at each other's option) the other's confidential information, and all copies of it (other than that information required to be retained for audit or regulatory purposes).