

# TERMS AND CONDITIONS OF BUSINESS (New Zealand)

- 1 Binding agreement**
- Unless otherwise agreed in writing, the Customer will be bound by these terms and conditions if the Customer places an order with the Seller and it is accepted by the Seller. The Seller is not bound by any terms and conditions contained in any document issued by the Customer. The Seller's quotation, order form and these terms and conditions constitute the entire agreement between the Seller and the Customer for each order.
- 2 Customer's order**
- 2.1 Once the Seller has accepted an order, it cannot be cancelled by the Customer without the Seller approval.
- 2.2 The supply of goods or services is subject to availability. The Seller reserves the right to suspend or discontinue the supply of goods or services to the Customer. If the Seller is unable to supply all of the Customer's order, these terms and conditions continue to apply to any part of the order supplied.
- 2.3 The Seller reserves the right to refuse any order based on a quotation within seven days after the order is received and at any time to refuse to accept or proceed with any order if the Customer's trade reference is unsatisfactory to the Company.
- 2.4 The Seller accepts no responsibility whatsoever for errors in dimensions, quantities, specifications or otherwise where orders for any goods are placed on the Seller by the Customer other than in writing.
- 3 Description**
- 3.1 Any representation, promise, statement or description by the Seller, other than those expressly set out in the quotation, is excluded and the Customer acknowledges that it has relied solely upon the quotation and its own inspection, skill and judgment and not relied on any such representation, promise, statement or description.
- 4 Selling price**
- Where a valid written quotation or electronic order has been given by the Seller, the selling price is the price specified in the quotation or electronic order. In any other case, the Seller's selling price is the price specified in the price list as at the date of despatch. Unless otherwise stated, the selling price does not include GST. Any GST or any like tax imposed by law on the supply of the goods or services will be recoverable from the Customer. All prices are subject to any variation in exchange rates, customs duty, taxes, freight, insurance and the selling prices of the Company's suppliers', which occur before
- delivery of the goods unless otherwise agreed in writing. The Seller may charge a reasonable handling fee for all orders delivered to the Customer.
- 5 Delivery time and place**
- 5.1 Unless otherwise agreed in writing by the Seller, delivery is at the Customer's premises.
- 5.2 The time of delivery in any quotation represents the time at which the goods are to be ready for dispatch from the Seller's premises and further time is to be allowed to cover transit to points of delivery. If a delivery or installation date is specified, the Seller will use its best endeavours to make delivery on the specified date. That date is an estimate only and the Seller is not liable for any loss or damage sustained by the Customer or any person due to delay in delivery or installation.
- 6 Force majeure**
- If, for any cause, beyond the Seller's control, including without limitation, any act of God, war, strike, lock out, industrial dispute, governmental or semi-governmental award, enactment priority or restriction, fire, flood, storm or tempest, delay in obtaining licenses, transport, labour or materials, accidents, damage to the Seller's works or business or those of its suppliers, the Seller is prevented from making delivery or performance at the time stipulated, the Seller will be entitled at its option either to extend the time for delivery or performance for a reasonable period or to terminate the order. In those circumstances, the Customer does not have any claim for damages and agrees to pay for all deliveries made or services performed prior to the date of termination and all expenses incurred and monies paid by the Seller in connection with the order.
- 7 Returning goods**
- 7.1 The Customer must inspect the goods or services immediately following delivery or completion of the services (as the case may be). The Customer may only return goods with the prior approval of the Seller. The following conditions apply for all goods returned with the approval of the Seller:
- (a) A written claim must be received within 7 days after delivery of the goods;
- (b) the original invoice number and date must be quoted;
- (c) on approval of the written claim the Seller will issue a Returns Authorisation which is to be attached to the Goods when returned; The Returns Authorisation may include biohazard decontamination procedures and other product-specific handling instructions;

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- (d) where goods were originally supplied in a special manufacturer's carton, any return must be made in that original carton and the goods must be in their original and unmarked condition, complete with any instruction sheets supplied;
- (e) outward and inward freight and transport charges are the responsibility of the Customer. If not pre-paid by the Customer, freight will be deducted from the amount of credit;
- (f) goods must be returned within 14 days of date of despatch in new condition as supplied;
- (g) a re-stocking fee may be charged; and
- (h) no responsibility will be accepted for any delays in passing credit caused by goods being incorrectly branded or returned without adequate identification of both sender and goods returned.
- 7.2 The following goods cannot be returned for credit:-
- (a) any goods specially made, including items cut to length;
- (b) any goods made, or purchased to a firm and irrevocable order; and
- (c) any goods altered or damaged by the Customer.
- 7.3 Any claim that the goods or services are not in accordance with these terms and conditions (including if they are defective, damaged during delivery, are short delivered or services not as per contract) must be made at the time of delivery/services provided or in writing to the Seller within seven days after delivery of the goods/completion of the services to the Customer. If the Customer fails to make a claim then, to the extent permitted by law, the goods and/or services are deemed to have been accepted by the Customer and the Customer must pay for the goods or services in accordance with these terms and conditions.
- 8 Obligations on Customer where Seller attends Customer's premises**
- 8.1 If the Seller's employees or authorised representatives attend any premises as directed by the Customer to install or apply any goods or perform any services, the Customer will ensure appropriate policies and procedures are in place and followed and generally implement good industry practice (including occupational health and safety policies and risk assessments for any dangerous or potentially dangerous activities) and act consistently with the Seller's policies as notified to the Customer.
- 8.2 In the case of goods which the Seller undertakes to install, it is the Customer's responsibility to provide any service utilities required, including electric power outlets, drains, water outlets and compressed air lines. Any hire costs for special handling equipment and any associated charges will be additional for the Customer's account. Installation will be made at the time specified in the order and the goods will be at the Customer's risk.
- 9 Trade in**
- 9.1 Any goods traded in by the Customer remain the Customer's property until delivery to the Seller's nominated point of delivery, such delivery to be at the Customer's expense.
- 9.2 Any goods traded in by the Customer are to be delivered to the Seller in the same state and condition it was in at the time of appraisal by the Seller, and if the goods are not so delivered, the Seller may at its option terminate the order.
- 10 Payment for goods or services**
- Unless otherwise agreed, if the Customer has an approved credit account with the Seller, the Customer must pay for goods and/or services ordered by the Customer on the 20th day of the month following delivery of the goods or earlier if the approved credit limit is exceeded. Time is of the essence in respect of the Customer's obligation to make payment for goods and/or services supplied by the Seller to the Customer.
- If you wish to pay via credit card, please call Customer Service (0800 933 966). It is not the company's policy to accept credit card numbers via email or fax.
- 11 Seller's entitlement on Customer's default**
- If the Customer
- (a) does not make any payment by the due date;
- (b) exceeds its credit limit at any time;
- (c) commits any other material breach of these terms and conditions; or
- (d) an insolvency event in respect of the Customer arises or is reasonably suspected by the Seller,
- the Seller may (without limiting any other right or claim it may have against the Customer) do any or all of the following:

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- (a) charge the Customer interest calculated on a daily basis on any portion of the Customer's account that is overdue at the Seller's bank's reference rate for business loans, available to prime commercial customers plus 5% calculated from the date the payment was due until the date payment is made (both dates inclusive);
- (b) vary or withdraw any approved credit limit and/or terms of trade;
- (c) cancel or suspend any unfilled orders or cease providing the services;
- (d) terminate any orders or contracts between the Seller and the Customer and demand immediate payment of any monies due and outstanding under those orders or contracts;
- (e) cancel any rebate, discount or allowance due or payable by the Seller as at the date of the event;
- (f) enter (at any time) any premises in which the Seller's goods (including any merchandising materials) are stored, to enable the Seller to inspect the goods and to reclaim possession of the goods without liability for the tort of trespass, negligence or payment of any compensation to the Customer whatsoever;
- (g) lodge a caveat or other similar instrument over any property of the Customer;
- (h) institute any recovery process as the Seller in its discretion decides at the Customer's cost and expense.

**12 No right to offset**

If any part of an invoice is in dispute, the balance will remain payable and must be paid when due. The Customer has no right to offset any claim against the Seller from monies owing to the Seller.

**13 Passing of risk and title**

Goods or Products supplied by the Seller to the Customer are at the Customer's risk and Customer retains title immediately on delivery to the Customer in accordance with clause 5. Title to any software incorporated within or forming part of the Products shall at all times remain with the Seller or the licensor(s) thereof. The Customer must insure the goods at its cost from delivery of the goods until they are paid for in full against such risks as are usual or common to insure against in a business of a similar nature to the Customer.

**14 Software**

With respect to any software products incorporated in or forming part of the Products hereunder, the Seller and the

Customer intend and agree that such software products are being licensed and not sold, and that the word "purchase", "sell" or similar or derivative words are understood and agreed to mean "license," and that the word "Customer" or similar or derivative words are understood and agreed to mean "licensee."

Notwithstanding anything to the contrary contained herein, Seller or its licensor, as the case may be, retains all rights and interest in software products provided hereunder.

Seller hereby grant to Customer a royalty-free, non-exclusive, non-transferable license, without power to sublicense, to use the software provided hereunder solely for the Customer's internal business purposes on the hardware products provided hereunder and to use the related documentation solely for the Customer's own internal purposes. This license terminates when the Customer's lawful possession of the hardware products provided hereunder ceases, unless earlier terminated as provided herein. Customer agrees to hold in confidence and not to sell, transfer, license, loan or otherwise make available in any form to third parties software products and related documentation provided hereunder. Customer may not disassemble, decompile, or reverse engineer copy, modify, enhance, or otherwise change or supplement the software products provided hereunder without the Seller's prior written consent. Seller will be entitled to terminate this license if the Customer fails to comply with any term or condition herein. The Customer agrees, upon termination of his license, immediately to return to Seller all software products and related documentation provided hereunder and all copies and portions thereof.

Certain of the software products provided by the Seller may be owned by one or more third parties and licensed to the Seller. Accordingly, the Seller and Customer agree that such third parties retain ownership of and title to such software products. The warranty and indemnification provisions set forth herein shall not apply to software products owned by third parties and provided hereunder.

**15 Seller's warranty**

15.1 To the extent permitted by law and subject to any written warranty entered into between the Seller and the Customer with respect to goods provided under these terms and conditions:

- (a) these terms and conditions exclude all other conditions, warranties, liabilities or

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- representations in relation to the goods and /or services whether express or implied;
- (b) where goods have not been manufactured by the Seller, the Customer is only entitled to such benefits as the Seller may receive under any warranties or representations given to the Seller by the manufacturer of the goods.
- (c) the Customer indemnifies the Seller for any claim, damage or injury to, or by, the goods.
- 15.2 Where legislation implies in these terms and conditions any condition or warranty that cannot be excluded or modified, the liability of the Seller for a breach of any such condition or warranty is limited at the Seller's option to any one or more of the following:
- (a) In the case of goods:
- (i) repair or replacement of the goods in accordance with clause 15.3 or the supply of equivalent goods;
- (ii) payment of the cost of replacing the goods or of acquiring equivalent goods, by credit to the Customer's account, in cash or by cheque at the Seller's discretion; or (iii) repayment of any part of the purchase price of the goods which has been paid by the Customer, by credit to the Customer's account, in cash or by cheque at the Seller's discretion.
- (b) In the case of advice, recommendations, information or services by supplying the advice recommendations, information or services again.
- 15.3 Parts and labour for repair or replacement under clause 15.2 (a) will be provided by the Seller during normal working hours at a place of business of the Seller. The Seller is not liable for the cost of transportation of the goods to such place of business. All rejected parts or defective parts will be the property of the Seller to dispose of as it sees fit.
- 16 **Seller's liability**
- Subject to clause 16, the Seller is not liable for any loss or damage of any kind whatsoever and howsoever arising (including but not limited to loss arising by reason of delay, non-delivery, defective materials or workmanship) out of or in connection with the supply of goods or services, including (without limitation) any indirect or consequential loss (including without limitation loss of profit, loss of revenue, loss of contract, loss of use of goods, loss on resale, loss of goodwill or increased cost of workings), even if due to the negligence of the Seller or any of its employees or agents.
- 17 **Application of international law** The application of the United Nations Convention on Contracts for the International Sale of Goods (known as the Vienna Sales Convention 1980) is excluded.
- 18 **Consumer Guarantees Act 1993** If the Customer is acquiring the goods for the purposes of the business, then to the extent permitted by law, all the guarantees and remedies in the Consumer Guarantees Act 1993 (or its replacement) are excluded.
- 19 **Severability** If any provision of these terms or conditions is unenforceable, illegal or void, that provision is severed and the other provisions of these terms and conditions remain in force.
- 20 **Variations** The Seller may amend or vary these terms and conditions by notifying the Customer in writing of the amendment or variation.
- 21 **Governing law** The laws of New Zealand apply to these terms and conditions and any account opened in the name of the Customer. The parties irrevocably submit to the jurisdiction of the appropriate court convenient to the Seller in respect of any claims, proceedings and matters arising out of or in respect of these terms and conditions.
- 22 **Terms apply regardless of breach** The exemptions, limitations, terms and conditions in these terms and conditions apply whether or not any loss or damage is caused by negligence or actions constituting fundamental breach of contract.
- 23 **Assignment** Any agreement incorporating these terms and conditions can not be assigned or transferred by Customer to another party without the approval of the Seller, which approval will not be unreasonably withheld.
- 24 **Goods on approval**
- 24.1 This clause 24 applies if goods are loaned to the Customer on approval. Where the Seller provides the Customer with loan goods, and including any accessories then the Customer must:
- (a) Only use the loan goods for normal daily use and for evaluation purposes and in the manner which the Seller directs;
- (b) exercise the utmost care and diligence in relation to the loan goods;
- (c) not sell, hire, re-loan, demonstrate to a third party or use in a commercial manner the loan goods or otherwise charge, pledge or part with possession of the loan goods;
- (d) not alter, modify, tamper or make any other adjustments to the loan goods;

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- (e) where goods were originally supplied in a special manufacturer's carton, they must be returned in that original carton and the goods must be in their original and unmarked condition, complete with any instruction sheets supplied.
- 24.2 The Customer warrants that it has the necessary skill and expertise to enable the loan goods to be sufficiently evaluated so as not to cause loss or damage to the loan goods.
- 24.3 If the Seller requests the return of the loan goods (which the Seller is entitled to do prior to the Loan Period ending, without giving any reason or prior notice), or the Loan Period ends without the Customer buying the loan goods, the Customer must promptly return the loan goods to the Seller, at the Customer's expense. Further, the Customer authorises the Seller to enter its premises for the purpose of taking possession of the loan goods.
- 24.4 If, on return to the Seller, the loan goods require repair (including realignment) to restore them to their condition at the time of the initial loan (other than reasonable wear and tear), the Seller will be entitled to recover from the Customer the reasonable cost of repairing or replacing the loan goods. If the loan goods are used with bio-hazardous materials, the loan goods must be cleared and/or decontaminated at the Customer's expense prior to return.
- 24.5 The Loan Period may only be extended if, during the Loan Period, the Customer has obtained the written consent of the Seller.
- 24.6 The loan goods remain the property of the Seller. The Customer must from time of delivery until return to the Seller insure the loan goods with a reputable insurance company against any loss to the loan goods, damage to real and personal property or injury to or death of, any person caused by the use of the loan goods by the Customer.
- 24.7 If any of the loan goods fail to perform to specified standards the Customer must promptly notify such failure to the Seller's representative named on the order.
- 25 Goods on hire**
- This clause 25 applies if goods are hired or rented (as identified in the order, and including any accessories), for the Hire Fee to the Customer under the terms of an order.
- 25.1 The Customer will pay the Hire Fee to the Seller in accordance with the payment terms specified in the order and, if not specified, in accordance with these terms and conditions. The Seller reserves the right to vary the Hire Fee payable by the Customer.
- 25.2 The Customer must:
- (a) only use those hired goods for their proper purpose and in the manner which the Seller directs;
  - (b) exercise the utmost care and diligence in relation to the hired goods;
  - (c) not sell, hire, re-loan, demonstrate to a third party or use in a commercial manner the loan goods or otherwise charge, pledge or part with possession of the loan goods without the written permission of the Seller;
  - (d) not alter, modify, tamper or make any other adjustments to the hired goods;
  - (e) notify the Seller if the hired goods breakdown or require repair;
  - (f) must not cause any repairs or other work to be done on the hired goods without the consent of the Seller.
- 25.3 The Customer must return at its expense the hired goods clean and in good working order (subject to reasonable wear and tear). If the hired goods are not returned in this manner the Seller will be entitled to recover from the Customer the reasonable cost of cleaning, repairing or replacing the hired goods. If the hired goods are used with bio-hazardous materials, the hired goods must be decontaminated at the Customer's expense prior to return.
- 25.4 The Hire Period may only be extended if, during the Hire Period, the Customer has obtained the written consent of the Seller.
- 25.5 The hired goods remain the property of the Seller. The Customer must from time of delivery until return to the Seller insure the hired goods with a reputable insurance company against any loss to the hired goods, damage to real and personal property or injury to or death of, any person caused by the use of the hired goods by the Customer.
- 26 Equipment maintenance services**
- This clause 26 applies where the Seller provides Equipment Maintenance Services to the Customer in return for the Service Fee (as set out in the order).
- 26.1 The Customer will pay the Service Fee to the Seller in accordance with the payment terms. The Seller reserves the right to vary the Service Fee payable for the Equipment Maintenance Services.
- 26.2 Equipment Maintenance Services will be provided for the period specified in the order, and will then continue automatically to be renewed for further 12 month periods unless terminated by either party at least 30 days prior to the commencement of a new 12 month period.

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- 26.3 Equipment Maintenance Services will be performed by a service engineer who will make the specified number of routine calls during the Service Period (as set out in the Order).
- 26.4 Where the nature of the repair work required is such that the value of parts to be supplied or the work to be performed would necessitate an additional charge being made, such work will only be done on the authority of an authorised officer from the Customer.
- 26.5 Equipment Maintenance Services does not include repair damage due to fire, water, accident, abuse, negligence wilful act or default by the Customer. Abuse includes any damage resulting from the operation of the Serviced Equipment other than in accordance with the operating instructions provided by the manufacturer, its representatives or those of the Seller.
- 26.6 The Customer must notify the Seller of any change to the location of the Serviced Equipment. The Seller reserves the right to terminate this order or to increase the Fee if additional costs are, or would be incurred by reason of such change in location.
- 27 EXPORT RESTRICTIONS**
- Customer acknowledges that each Product and any related software technology, including technical information supplied by the Seller or contained in the documents (collectively "Items"), is subject to applicable export controls, including those of the Australian government. The export controls may include, but are not limited to, the Customs (Prohibited Exports) Regulations 1958. The Customer shall comply with all applicable laws, regulations, treaties, and agreements relating to the export, re-export and import of any Item. The Customer shall not, without first obtaining the required license to do some from the appropriate government agency; (i) export or re-export any Item, or (ii) export, re-export, distribute or supply any Item to any restricted or embargoed country or to a person or entity whose privilege to participate in exports has been denied or restricted by the Australian government. The Customer shall cooperate fully with the Seller in any official or unofficial audit or inspection related to applicable export or import control laws or regulations, and shall indemnify and hold the Seller harmless from, or in connection with, any violation of this Section by the Customer or its employee, consultants, agents or customers.
- 28 General**
- 28.1 In addition to the Seller's general rights of termination under these terms and conditions, the Seller reserves the right to terminate this order if:
- (a) the Serviced Equipment, hired goods or loan goods are repaired or modified without its prior knowledge or consent, by any person other than an authorised representative of the Seller;
  - (b) the Seller ceases to have rights to distribute the goods or to provide the services. The Customer releases the Seller from any liability in the event that these terms and conditions are terminated under this clause.
- 29 Personal Property Securities Act 1999 (PPSA)**
- (a) Without limiting anything else in these terms and conditions, the Customer acknowledges and agrees that these terms and conditions create a security interest in the goods supplied, and in all the proceeds of the goods supplied by the Seller. The Customer undertakes to promptly sign any further documents (including any new agreements), provide any further information and do anything else that the Seller may require to register a financing statement on the Personal Property Securities Register and generally to perfect and maintain the security interest.
  - (b) The security interest continues until the Seller gives the Customer a final release.
  - (c) The Customer will not enter into any security agreement that permits any other person to register any security interest in respect of the goods or the proceeds.
  - (d) The Customer undertakes to give the Supplier not less than 14 days' prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's details (including, but not limited to, changes in the Customer's address, facsimile number, trading name or business practice).
  - (e) The Customer agrees, to the extent Part 9 of the PPSA applies, that to the fullest extent permitted by law, it will have no rights under Part 9 (Enforcement) of the PPSA. For example, but without limitation:
    - (i) the Customer will have no rights under sections 114(1)(a) (to received a notice of sale), section 117(1)(c) (relating to distribution of surplus), and sections 133 and 134 (reinstating the agreement);
    - (ii) the Customer waives its rights under section 116 (to received statement of account), section 119 (to recover surplus) and sections 120(2) and 121 (to receive notice of any proposal to retain the goods and object to any proposal).
  - (f) The Customer waives its right under the PPSA to receive a copy of any verification statement or financing change statement.

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- (g) The Customer agrees that where the Seller has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.
- (h) The Customer agrees that the security interest has the same priority in relation to all amounts forming part of the amount owing, including future advances.
- (i) For the purposes of this clause, the expressions "personal property", "security agreement", "security interest", "perfected security interest", "verification statement", and "financing change statement" have the meanings given to them under, or in the context of the PPSA.

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