

Terms and Conditions

1. DEFINITION

- 1.1. "Seller" shall mean I.T. Business Solutions Limited and its successors and assigns.
- 1.2. "Buyer" shall mean the buyer or any person or Seller acting on behalf of and with the authority of the buyer.
- 1.3. "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Buyer if a Limited Liability Seller on a principal debtor basis.
- 1.4. "Goods" shall have the same meaning as in section 2 of the Sale of Goods Act 1908 and are goods supplied by the Seller to the Buyer (and where the context so permits shall include any supply of Services as hereinafter defined).
- 1.5. "Services" shall mean all services supplied by the Seller to the Buyer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined supra).
- 1.6. "Price" shall mean the cost of the goods as agreed between the Seller and the Buyer subject to clause 4 of this contract.

2. ACCEPTANCE

- 2.1. Any instructions received by the Seller from the Buyer for the supply of Goods and/or the acceptance of any Goods / Services supplied by the Seller to the Buyer shall constitute acceptance of the terms and conditions contained herein.
- 2.2. Upon acceptance of these terms and conditions by the Buyer the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the Director of the Seller.
- 2.3. None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by Director of the Seller in writing nor is the Seller bound by any such unauthorised statements.

3. GOODS / SERVICES

- 3.1. The Goods and/or Services are as described on the invoices, quotation, work authorisation, rental agreements or any other work commencement forms as provided by the Seller to the Buyer.
- 3.2. Unless specified in the quotation
 - (a) Installation is to existing cabling. If existing extensions are found during installation to be inadequate or requiring replacement, an additional charge will be incurred on a time and materials basis.
 - (b) Installation excludes wall mount phone brackets.
 - (c) Installation excludes Telco network services costs.
 - (d) Installation is to an existing and suitable power source.
- 3.3. Buyer warrants any designs or information passed to Seller from Buyer to enable quotation. In the event that this information is incorrect, Seller reserves the right charge variation for time and costs incurred.

4. PRICE AND PAYMENT

- 4.1. At the Sellers sole discretion;
 - (a) the Price shall be as indicated on invoices and/or rental agreements provided by the Seller to the Buyer in respect of Goods supplied; or
 - (b) the Price shall be the Seller's current Price at the date of delivery of the Goods according to the Sellers current Price list; or
 - (c) the Price of the Goods shall be the Seller's quoted Price which shall be binding upon the Seller provided that the Buyer shall accept the Seller's quote within twenty-eight (28) days.
- 4.2. At the Sellers sole discretion a deposit may be required. The deposit amount or percentage of the Price will be stipulated at the time of the order of the Goods / Services and shall become immediately due and payable.
- 4.3. Any variation from the plan of scheduled works or specifications, or from measurements taken on site, will be charged for on the basis of the Seller's quotation and will be invoiced separately as a variation. Payments for all variations must be made in full at their time of completion.
- 4.4. For approved Buyers and with permission of the Seller payment shall be due on the 20th of the month following the invoice date.
- 4.5. Payment will be made by direct credit or by any other method as agreed to between the Buyer and the Seller.
- 4.6. The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes or duties are expressly included in any quotation given by the Seller. Any variation in import duties, sales tax or any other tax or currency exchange shall be added to the Buyer's accounts.

5. DELIVERY OF GOODS

- 5.1. The Seller shall deliver and install the Goods as soon as reasonably possible or as agreed between parties. Delivery of the Goods shall be made to the Buyer's address. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
- 5.2. The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.
- 5.3. The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.
- 5.4. When the Goods at the date of this agreement are in possession of a third person there is no delivery by the Seller to the Buyer unless and until such third person acknowledges to the Buyer that the Goods are being held on behalf of the Buyer subject to the issue or transfer by the Seller of documents of title to the Goods.

6. RISK

- 6.1. If the Seller retains title to and property in the Goods nonetheless all risk for the Goods passes to the Buyer on delivery, including delivery to the Buyer's agent or carrier or freight-forwarder or warehouseperson for the purpose of delivery to or storage for the Buyer.
- 6.2. The Buyer will insure each item of Goods for its full value in the name of the Seller immediately prior to or on delivery.
- 6.3. If any of the Goods are damaged or destroyed prior to property in them passing to the Buyer, the Seller is entitled, without prejudice to any of its other rights or remedies under these terms and conditions, (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable in respect of the Goods. This applies whether or not the Price has become payable under these terms and conditions. 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. The Seller will apply the insurance proceeds as follows:
 - (i) first, in payment of the Price of the Goods that are damaged or destroyed, if unpaid;
 - (ii) second, in payment of the outstanding Price of any other Goods supplied to the Buyer by the Seller whether under the terms and conditions or otherwise;
 - (iii) third, in payment of any other sums payable to the Seller by the Buyer on any account;
 - (iv) fourth, any balance is to be paid to the Buyer.

7. DEFECTS

- 7.1. The Buyer shall inspect the Goods on delivery or installation and shall within thirty (30) working days of delivery or installation notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Buyer shall afford the Seller an opportunity to inspect the Goods and installation within a reasonable time following delivery. If the Buyer shall fail to comply with these provisions the Goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.

8. RETURN OF GOODS

- 8.1. For defective Goods which the Seller has agreed in writing that the Buyer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods provided that:
 - (a) the Buyer has complied with the provisions of clause 7.1;
 - (b) the Seller will not be liable for Goods which have not been stored or used in a proper manner.
 - (c) the Buyer returns the Goods to the Seller within fourteen (14) days of delivery.
- 8.2. Goods must be returned in the condition in which they were delivered, along with the packaging material, brochures, instruction manuals and any other instruction material in as new condition, or as close to as new condition as is reasonably possible in the circumstances.
- 8.3. In the event of dispute regarding the return of Goods, the Buyer must provide evidence that the goods have been returned and accepted by the Seller

9. WARRANTY

- 9.1. Notwithstanding any specific product warranty and subject to the conditions of warranty set out in Clause 9.2 the Seller warrants that if any defect in materials and workmanship becomes apparent and is reported to the Seller within 365 days of the date of delivery then the Seller will (at the Sellers sole discretion) either repair or replace the defective Goods or part thereof.
- 9.2. The warranty given by Clause 9.1 shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) Failure on the part of the Buyer to properly maintain any Goods; or
 - (ii) Failure on the part of the Buyer to follow any instructions or guidelines provided by the Seller; or
 - (iii) Any use of any Goods otherwise than for any application specified on a quote or order form; or
 - (iv) The continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) Fair wear and tear; or
 - (vi) Any accident or act of God.
- 9.3. 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.
- 9.4. In respect of all claims the Seller shall not be liable to compensate the Buyer for any delay in either replacing or repairing the workmanship/Goods or in properly assessing the Buyers claim.
- 9.5. All other warranties, representations, promises, conditions of statements regarding the Goods either express or implied (including, without limiting the generality of the foregoing, warranties or conditions as to the suitability of fitness of the Goods for any particular application) not expressly referred to herein are hereby expressly excluded.
- 9.6. All Goods are sold on a return to base warranty basis unless otherwise expressed in writing at the time of purchase. The Seller reserves the right to charge for time and travel for warranty work.
- 9.7. The Seller reserves the right to charge for Time and Materials for warranty callouts initiated by the Buyer that the Seller finds to be non-warranty related as per Clause 9.1
- 9.8. Warranty on second hand equipment is 90 days from date of delivery unless otherwise specified.

10. CONSUMER GUARANTEES ACT 1993

10.1. Where the Buyer is a business (as "business" is defined by the Consumer Guarantees Act 1993). It agrees that it is acquiring the Seller's Goods or Services (as the case may be) for the purposes of the business and that the Consumer Guarantees Act 1993 does not apply.

10.2. Where the provisions of the Consumer Guarantees Act 1993 apply, the provisions of these conditions will be read subject to the application of that Act, and in the case of any conflict, the provisions of that Act will apply.

11. DEFAULT & CONSEQUENCES OF DEFAULT

11.1. Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and shall accrue at such a rate after as well as before any judgement.

11.2. If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller from and against all the Seller's costs and disbursements including on a solicitor and own client basis and in addition all of the Seller's nominee's costs of collection.

11.3. Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause.

11.4. In the event that:

(a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due; or

(b) the Buyer 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

(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer then;

(i) the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unperformed in addition to and without prejudice to any other remedies; and

(ii) all amounts owing to the Seller shall, whether or not due for payment, immediately become due and payable; and

(iii) the Seller shall be entitled to reclaim any Goods in the Buyer's possession or control, which have been supplied by the Seller and to dispose of the Goods for its own benefit and shall be entitled to enter with force if required, directly or by its agents, upon any land or premises where the Seller believes the Goods which it has supplied are stored without being liable to any person.

12. TITLE

It is the intention of the Seller and agreed by the Buyer that property in the Goods shall not pass until the Buyer has paid all amounts owing for the particular Goods. It is further agreed that:

(a) The Buyer shall not deal with the money of the Seller in any way which may be adverse to the Seller.

(b) Until such time as ownership of the Goods shall pass from the Seller to the Buyer the Seller may give notice in writing to the Buyer to return the Goods or any of them to the Seller. Upon such notice the rights of the Buyer to obtain ownership or any other interest in the Goods shall cease.

(c) If the Buyer fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Buyer, or any premises as the invitee of the Buyer, where the Goods are situated and take possession of the Goods, without being responsible for any damage thereby caused.

(d) 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 and until then the Seller's ownership of rights in respect of the Goods shall continue.

(e) The Buyer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Seller.

(f) The Seller may require payment of the Price or the balance of the Price due together with any other amounts due from the Buyer to the Seller arising out of these terms and conditions, and the Seller may take any lawful steps to require payment of the amounts due with respect to the Price.

(g) The Seller can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Buyer.

13. PERSONAL PROPERTY SECURITIES ACT 1999

13.1. Upon assenting to these terms and conditions the Buyer acknowledges and agrees that:

(a) These terms and conditions constitute a security agreement for the purposes of section 36 of the Personal Property Securities Act 1999 ("PPSA"); and

(b) A security interest is taken in all Goods previously supplied by the Seller to the Buyer (if any) and all Goods that will be supplied in the future by the Seller to the Buyer during the continuance of the parties relationship;

13.2. The Buyer undertakes to:

(a) 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;

(b) not register a financing change statement (in accordance with Regulation 9) or a change demand (in accordance with Regulation 10) without the prior written consent of the Seller;

(c) give the Seller not less than 14 days prior written notice of any proposed change in the Buyer's name and/or any other change in the Buyer's details (including but not limited to, changes in the Buyer's address, facsimile number, or business practice); and

(d) 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.

13.3. Unless otherwise agreed to in writing by the Seller, the Buyer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

14. PRIVACY ACT

The Buyer and the Guarantor/s (if separate to the Buyer) authorises the Seller to collect, retain and use any information about the Buyer, for the purpose of assessing the Buyer's creditworthiness or marketing any Goods and Services provided by the Seller to any other party. The Buyer authorises the Seller to disclose any information obtained to any person for the purposes set out in clause 15.1

Where the Buyer is a natural person the authorities under clause 15.1 are authorities or consents for the purposes of the Privacy Act 1993.

15. LIEN & STOPPAGE IN TRANSIT

15.1. Where the Seller has not received or been tendered the whole of the Price, or where a bill of exchange or other negotiable instrument or the like has been dishonoured, the Seller shall have:

(a) a lien on the Goods;

(b) the right to retain them for the Price while the Seller is in possession of them;

(c) a right of stopping the Goods in transit whether or not delivery has been made or ownership has passed; and

(d) a right of resale, the foregoing right of disposal.

16. INTELLECTUAL PROPERTY

16.1. Where the Seller has designed or drawn Goods for the Buyer, then the copyright in those designs and drawings shall remain vested in the Seller, and shall only be used by the Buyer at the Seller's discretion.

16.2. Conversely, in such a situation, where the Buyer has supplied drawings, the Seller in its sale conditions may look for an indemnity (the specifications and design of the Goods (including the copyright, design right or other intellectual property in them) shall as between the parties be the property of the Seller).

Where any designs or specifications have been supplied by the Buyer for manufacture by or to the order of the Seller then the Buyer warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Goods shall not infringe the rights of any third party.

16.3. The Buyer warrants that all designs or instructions to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Buyer's order.

16.4. Where the Seller has provided computer software and documentation, the Seller retains ownership of the computer software and documentation, but grants a licence to the Buyer for use of the computer software and documentation. The Buyer will use any third-party software supplied by the Seller, and identified as such, strictly in terms of the licence under which it is supplied.

17. BUYERS DISCLAIMER

17.1. The Buyer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Seller and the Buyer acknowledges that he buys the Goods relying solely upon his own skill and judgement.

18. LEASE OR RENT

If the lease or rent option has been ticked, the Agreement shall be subject to the conclusion of an appropriate finance contract. The Buyer agrees to enter into the financiers Agreement which shall be on such financier's standard terms and conditions and such terms of this Agreement that are not inconsistent with the financiers Agreement shall apply.

19. OPERATING RESPONSIBILITY

19.1. The Buyer is fully responsible for the proper operation and use of the Goods and for the appointment of a Key Operator.

19.2. The Buyer is fully responsible for maintaining the security of the Goods including establishing and maintaining user passwords and controls.

19.3. The Seller accepts no responsibility for PABX hacking or fraud.

20. GENERAL

If any provision of these terms and conditions shall be invalid, void or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

All Goods and Services supplied by the Seller are subject to the laws of New Zealand and the Seller takes no responsibility for changes in the law which affect the Goods or Services supplied.

The Seller shall be under no liability whatever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of these terms and conditions.

In the event of any breach of this contract by the Seller the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price of the Goods.

The Buyer shall not set off against the Price amounts due from the Seller.

The Seller may license or sub-contract all or any part of its rights and obligations without the Buyer's consent.

The Seller reserves the right to review and change these terms and conditions. Any changes will take effect after 30 day's notice from the Seller to the Buyer.