

# IT CLOUD SOLUTIONS LIMITED – TERMS & CONDITIONS OF TRADE

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## 1. Definitions

1.1 "Seller" or "Owner shall mean IT Cloud Solutions, its successors and assigns or any person acting on behalf of and with the authority of IT Cloud Solutions.

1.2 "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, authorisation or other form as provided by the Seller to the Client.

1.3 "Equipment" shall mean all Equipment including any accessories supplied on hire by the Owner to the Client (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other form provided by the Owner to the Client.

1.4 "Guarantor" shall mean that person (or persons) who agrees to be liable for the debts of the Client on a principal debtor basis.

1.5 "Goods" shall mean all Goods supplied by the Seller to the Client (and where the context so permits shall include any supply of Services as hereinafter defined), and includes Goods described on any invoices, quotation, authorisation or any other forms as provided by the Seller to the Client.

1.6 "Services" shall mean all services supplied by the Seller to the Client and includes any advice or recommendations or warranty claims (and where the context so permits shall include any supply of Goods as defined above).

1.7 "Price" shall mean the price payable for the Goods as agreed between the Seller and the Client in accordance with clause 3 of this contract.

## 2. Acceptance

2.1 Any instructions received by the Seller from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by the Seller shall constitute acceptance of the terms and conditions contained herein.

2.2 Where more than one Client has entered into this agreement, the Clients shall jointly and severally be liable for all payments of the Price.

2.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of the Seller.

2.4 The Client shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by the Seller as a result of the Client's failure to comply with this clause.

2.5 Goods are supplied by the Seller only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

## 3. Price and Payment

3.1 At the Seller's sole discretion the Price shall be either:

- as indicated on invoices provided by the Seller to the Client in respect of Goods supplied; or
- the Seller's Price at the date of delivery of the Goods according to the Seller's current pricelist; or
- the Seller's quoted Price (subject to clause 3.2) which shall be binding upon the Seller provided that the Client shall accept the Seller's quotation in writing within seven (7) days.

3.2 The Seller reserves the right to change the Price in the event of a variation to the Seller's quotation. Any variation from the plan of scheduled Services or specifications of the Goods (including, but not limited to, any variation as a result of additional Goods required due to hidden or unidentifiable difficulties, fluctuations in currency exchange rates, or as a result of increases to the Seller in the cost of Goods) will be charged for on the basis of the Seller's quotation and will be shown as variations on the invoice.

3.3 At the Seller's sole discretion:

- a non-refundable deposit may be required; and/or
- payment shall be due on (or before) delivery of the Goods, or on the completion of any works.

3.4 Time for payment shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.

3.5 Payment will be made by cash, cheque, bank cheque, direct credit, or by any other method as agreed to between the Client and the Seller.

3.6 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

## 4. Delivery of the Goods

4.1 At the Seller's sole discretion delivery of the Goods shall take place when:

(a) the Client takes possession of the Goods at the Seller's address (where the Client's nominated carrier takes possession of the Goods, the carrier shall be deemed to be the Client's agent); or

(b) the Client takes possession of the Goods at the Client's nominated address (in the event that the Goods are delivered by the Seller or the Seller's nominated carrier).

4.2 At the Seller's sole discretion the costs of delivery are in addition to the Price and, where applicable, charged to the Client's account.

4.3 The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery.

4.4 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.

4.5 The Seller shall not be liable for any loss or damage whatsoever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all due to circumstances beyond the control of the Seller, nor shall such delay entitle the Client to consider this agreement repudiated.

## 5. Risk

5.1 If the Seller retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.

5.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Seller is entitled to receive all insurance proceeds payable for the Goods. 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.

5.3 It shall be the Client's sole responsibility to remove any removable media (including, but not limited to, diskettes, CDs, DVDs or PC Cards) from the Goods prior to returning or submitting the Goods for repair or replacement.

5.4 Notwithstanding clause 5.3 where programme discs are required in order for a computer to be serviced, then it shall be the Client's responsibility to provide the Seller with all of the legal software and licences (where appropriate) belonging to the computer being serviced.

5.5 The Seller shall not be held liable for any loss or corruption of data or files (including, but not limited to, software programmes) resulting from servicing or repairs being undertaken on the Goods. It is the sole responsibility of the Client to back-up any data which they believe to be important, valuable or irreplaceable prior to bringing in any Goods for servicing or repairs.

5.6 The Seller shall not be responsible for storage of any Client data once a job has been completed, subsequent back-up of data shall become the Client's sole responsibility.

5.7 The Client acknowledges that electronic equipment may be subject to damage caused by power spikes and that the Seller recommends the use of surge protectors or uninterruptible power supplies to prevent such damage. Accordingly the Seller will accept no responsibility for any damage caused to the Client's equipment resulting from power spikes, brown outs or lightning strikes.

5.8 The Client acknowledges that any damage caused to the Client's equipment resulting from power or lightning problems may result in the manufacturer's warranty not being honoured.

5.9 The Client acknowledges and agrees that (unless covered by a written warranty agreement) once a computer system has been set up for the Client by the Seller it is the Client's responsibility to maintain the day to day integrity, functionality and performance of the computer system, and to protect the system against potential damages that may be caused by viruses, trojans, malware, adware, spyware, malicious software, non-compatible software, registry cleaners, fixers, nonindustry standard devices etc. In the event that the Client fails to do so and requests the Seller to rectify, or restore the system to a clean and acceptably usable state similar to that as when originally supplied then the costs of doing so shall be the Client's liability.

5.10 The Client accepts that it is not always possible for the Seller to effect the repair of Goods or to determine if the Goods are repairable without further investigation or testing and that there is a risk that the Goods may suffer unavoidable damage or completely breakdown during such processes therefore Goods are submitted for repair at the sole risk of the Client and the Seller will accept no loss or damage claim in relation to such Goods unless it can be clearly shown that the additional damage to, or terminal breakdown of, the Goods was a direct result of a negligent or willful action of the Seller.

## 6. Title

6.1 The Seller and Client agree that ownership of the Goods shall not pass until:

- the Client has paid the Seller all amounts owing for the particular Goods; and
- the Client has met all other obligations due by the Client to the Seller in respect of all contracts between the Seller and the Client.

6.2 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 or rights in respect of the Goods shall continue.

6.3 It is further agreed that:

(a) where practicable the Goods shall be kept separate and identifiable until the Seller shall have received payment and all other obligations of the Client are met; and

(b) until such time as ownership of the Goods shall pass from the Seller to the Client the Seller may give notice in writing to the Client to return the Goods or any of them to the Seller. Upon such notice being given the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and

(c) the Client is only a bailee of the Goods and until such time as the Seller has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Client owes to the Seller for the Goods, on trust for the Seller; and

(d) until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that the Seller will be the owner of the end products; and

(e) if the Client fails to return the Goods to the Seller then the Seller or the Seller's agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Goods are situated and take possession of the Goods, and the Seller will not be liable for any reasonable loss or damage suffered as a result of any action by the Seller under this clause.

## 7. Personal Property Securities Act 1999 ("PPSA")

7.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:

(a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and

(b) a security interest is taken in all Goods previously supplied by the Seller to the Client (if any) and all Goods that will be supplied in the future by the Seller to the Client.

7.2 The Client undertakes to:

- 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;
- indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
- not register a financing change statement or a change demand without the prior written consent of the Seller; and
- 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.

7.3 The Seller and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

7.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

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

7.6 The Client shall unconditionally ratify any actions taken by the Seller under clauses 7.1 to 7.5.

## 8. Security and Charge

8.1 In consideration of the Seller agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

8.2 The Client indemnifies the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Seller's rights under this clause.

8.3 The Client irrevocably appoints the Seller and each director of the Seller as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 8 including, but not limited to, signing any document on the Client's behalf.

## 9. Client's Disclaimer

9.1 The Client hereby disclaims any right to rescind, or cancel any contract with the Seller or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by the Seller and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.

## 10. Defects

10.1 The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Seller has agreed in writing that the Client is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods (subject to clause 12).

#### 11. Returns

11.1 Returns will only be accepted provided that:

- (a) the Client has complied with the provisions of clause 10.1; and
- (b) the Seller has agreed in writing to accept the return of the Goods; and
- (c) the Goods are returned at the Client's cost within seven (7) days of the delivery date; and
- (d) the Seller will not be liable for Goods which have not been stored or used in a proper manner; and
- (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.

11.2 The Seller may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of ten percent (10%) of the value of the returned Goods plus any freight.

#### 12. Warranty

12.1 For Goods not manufactured by the Seller (including, but not limited to, all components used to build or assemble a computer or device), the warranty shall be the current warranty provided by the supplier or manufacturer of the Goods. The Seller shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the supplier or manufacturer of the Goods.

12.2 Where a warranty card is supplied with the Goods then only the conditions specified on the warranty card shall apply to those particular Goods.

12.3 For the sake of clarity in the event that any manufacturer or supplier declines any warranty claim made under clauses 12.1 & 12.2 then the Seller shall be entitled to charge the Client for all costs incurred by the Seller in submitting the warranty claim to the supplier or manufacturer and/or (where applicable), restoring any equipment of the Client's to a functional status.

12.4 The Seller may at its sole discretion offer (in writing) an agreed three (3) or six (6) month limited warranty on second hand Goods. For all other second hand Goods sold where no such written warranty is provided, the Client acknowledges that he has had full opportunity to inspect the same and that he accepts the same with all faults and acknowledges that no warranty is given by the Seller as to the quality or suitability of the Goods for any purpose and any implied warranty, statutory or otherwise, is expressly excluded to the maximum extent permitted by law. The Seller shall not be responsible for any loss or damage to non-warranted second hand Goods, or caused by those Goods, or any part of them howsoever arising.

#### 13. Consumer Guarantees Act 1993

13.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by the Seller to the Client.

#### 14. Intellectual Property

14.1 Where the Seller has designed, drawn or written Goods for the Client (including software and hardware), then the copyright in those designs and drawings and documents shall remain vested in the Seller, and shall only be used by the Client at the Seller's discretion.

14.2 The Client 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 Client's order and the Client agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.

14.3 The Client agrees that the Seller may use any documents, designs, drawings or Goods created by the Seller for the purposes of advertising, marketing, or entry into any competition.

14.4 Where the Seller has provided computer software and documentation, whether compiled by the Seller or any third party then the Client acknowledges and agrees that they shall at all times comply with and utilise such software strictly in accordance with the licence or documentation supplied with the software and then solely for their own use. The Seller offers no additional warranty in regards to the software. Furthermore the Client shall not be entitled to:

- (a) use or rely on the Software for any purpose or in any manner for which the Software is not purported to be designed or suitable for;
- (b) copy, reproduce, translate, adapt, vary merge or modify or create any derivative work based on the Software;

(c) reverse engineer, decompile, disassemble, reconfigure or otherwise attempt to discover the source code of the Software, or assist another party to do the same; and

(d) sell, market, network, transfer, lease, licence, sub-licence, rent, lend or otherwise dispose of or distribute the Software in any way whatsoever.

#### 15. Default and Consequences of Default

15.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

15.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by the Seller.

15.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in pursuing the debt including legal costs on a solicitor and own client basis and the Seller's collection agency costs.

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

15.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or five percent (5%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.

15.6 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable in the event that:

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

#### 16. Cancellation

16.1 The Seller may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice the Seller shall repay to the Client any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.

16.2 In the event that the Client cancels delivery of the Goods the Client shall be liable for any loss incurred by the Seller (including, but not limited to, any loss of profits) up to the time of cancellation or as a direct result of the cancellation.

16.3 Cancellation of orders for Goods made to the Client's specifications or nonstocklist will definitely not be accepted, once production has commenced.

#### 17. Privacy Act 1993

17.1 The Client and the Guarantor/s (if separate to the Client) authorises the Seller to:

- (a) collect, retain and use any information about the Client and/or Guarantors, for the purpose of assessing the Client's and/or Guarantors creditworthiness or marketing products and services to the Client and/or Guarantors; and
- (b) disclose information about the Client and/or Guarantors, whether collected by the Seller from the Client and/or Guarantors directly or obtained by the Seller from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client and/or Guarantors.

17.2 Where the Client and/or Guarantors are an individual the authorities under clause 17.1 are authorities or consents for the purposes of the Privacy Act 1993.

17.3 The Client and/or Guarantors shall have the right to request the Seller for a copy of the information about the Client and/or Guarantors retained by the Seller and the right to request the Seller to correct any incorrect information about the Client and/or Guarantors held by the Seller.

#### 18. Unpaid Seller's Rights

18.1 Where the Client has left any item with the Seller for repair, modification, exchange or for the Seller to perform any other Service in relation to the item and Seller has not received or been tendered the whole of the Price, or the payment has been dishonoured, the Seller shall have:

- (a) a lien on the item;
- (b) the right to retain the item for the Price while the Seller is in possession of the item;
- (c) a right to sell the item.

18.2 The lien of the Seller shall continue despite the commencement of proceedings, or judgement for the Price having been obtained.

#### 19. Equipment Hire

19.1 The Equipment shall at all times remain the property of the Owner and is returnable on demand by the Owner. In the event that the Equipment is not returned to the Owner in the condition in which it was delivered the Owner retains the right to charge the Client the full cost of restoring the Equipment and/or the system to a clean and acceptably usable state similar to that as when originally supplied or repairing the Equipment. In the event Equipment is not returned at all the Owner shall have the right to charge the Client the full cost of replacing the Equipment.

19.2 For the sake of clarity restoration of the Equipment under clause 19.2 shall mean all reasonable costs incurred by the Owner in restoring the Equipment to its original state as when supplied including having to reset up any software or the operating system, removal of viruses, trojans, malware, adware, spyware, malicious software, etc or rectification of any damages caused by registry cleaners, fixers, or any other programme used by the Client whilst the Equipment has been in the Client's care.

19.3 The Client shall:

- (a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to lien over the Equipment.
- (b) immediately inform the Owner if the Equipment is moved to any premises other than that to which the Equipment was initially delivered.

(c) at all times use either suitable surge protectors or suitable uninterruptible power supplies to prevent damage to the Equipment and the Client shall be liable for all repairs necessitated through the Client's failure to adhere to this clause.

(d) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.

(e) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply (at the Client's cost) with any maintenance schedule advised to the Client and required by the Owner.

(f) upon request from the Owner allow the Owner free access to inspect the condition of the Equipment.

19.4 The Client accepts full responsibility for the safekeeping of the Equipment and the Client agrees to insure, or self insure, the Owner's interest in the Equipment and agrees to indemnify the Owner against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect (where a business) adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

#### 20. General

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

20.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.

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

20.4 In the event of any breach of this contract by the Seller the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price.

20.5 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Seller nor to withhold payment of any invoice because part of that invoice is in dispute.

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

20.7 The Seller reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Client of such change.

20.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.

20.9 The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision.