

Business IT Limited (“BIT”) General Terms & Conditions

1 AGREEMENT: GOODS, PRICE, TIME OF DELIVERY, PLACE OF DELIVERY, PAYMENT

- 1.1 BIT agrees to sell and the Customer agrees to buy the goods to be delivered and/or services to be supplied as referred to in the BIT Credit Application Form at the price stated in the BIT Credit Application Form to the place stated in the BIT Credit Application Form at the time and manner stated in the BIT Credit Application Form for which payment is to be made at the time and manner stated in the BIT Credit Application Form and as set forth in this Agreement.
- 1.2 Payment is due in cash, approved credit card or internet banking on or before delivery. If your account is in default, in accordance with clause 1.4 BIT may cease to supply the Customer with any further goods and/or services.
- 1.3 If BIT consents in writing to credit terms, then subject to written notification to the contrary and subject to the BIT Credit Application Form, payment is due for goods and/or services in the method prescribed by the Customer and agreed to by BIT as set out in the BIT Credit Application Form, which shall be:
 - a) Before 5pm upon the 20th of the month following the invoice date; or
 - b) Before 5pm the 7th day after the date of the invoice.
- 1.4 Time for payment is of the essence. If the Customer fails to make any payment on the due date then without prejudice to any of BIT's other rights BIT may:
 - a) Suspend or cancel all deliveries of goods and/or services to the Customer without notice and/or treat this Agreement as repudiated by the Customer; and/or
 - b) Appropriate any payment made by the Customer to such of the goods and/or services (or goods and/or services supplied under any other agreement with the Customer) as BIT may in BIT's sole discretion think fit. BIT may at its sole discretion apply payments made by the Customer first in payment of default interest and secondly in reduction of invoiced amounts. BIT is entitled to recover from the Customer any discount given to the Customer for any goods and/or services for which the Customer is in default.
 - c) Events of default for the purposes of section 109 of the Personal Property Securities Act include: failure to pay amounts due, failure of the Customer to comply with any other obligation owed to BIT, or in BIT's opinion the Customer is likely to be unable to meet its obligations to BIT, or the Customer becomes insolvent or has a receiver appointed in respect of all or some of the Customer's assets, or makes or is likely to make an arrangement with the Customer's creditors or has a liquidator (provisional or otherwise) appointed or is placed under statutory management.
 - d) In the event of a default, all amounts outstanding under all of the then current contracts between the Customer and BIT will, whether or not due for payment, immediately become due and payable.
- 1.5 All prices are plus GST and other taxes: GST & taxes are additional to the price and must be paid in full by the Customer.
- 1.6 The price shall be the price of BIT current at the date of the delivery of the goods or the supply of the services. BIT may alter any prices without notice and the purchase price of the goods and/or services payable by the Customer may be different from the price estimate provided, or the price current when the goods and/or the services were commissioned. Quoted prices may not be assumed to apply to variations.
- 1.7 If payment is not made in full by the due date, BIT is entitled to charge the Customer interest on the unpaid overdue balance at the rate of 5% per annum above the current overdraft rate charged by BIT's bankers, compounding monthly on the unpaid balance owing on the first day of each month until payment is received in full and BIT may

charge the Customer costs (including collection & legal costs on a solicitor-client basis) and, as stated in clause 1.4 BIT may suspend delivery of further products or performance of further services until the account, including any default interest is paid in full.

- 1.8 The Customer indemnifies BIT for full solicitor/client and other recovery costs relating to any default of the Customer under this Agreement.

2 NO UNDERTAKING AS TO QUALITY OR FITNESS AND EXCLUSION OF LIABILITY

- 2.1 Subject to the BIT Credit Application Form and the maximum extent permitted by law:

- a) all terms, conditions and warranties (whether implied or made expressly) whether by BIT or its agents or employees or otherwise relating to the quality and/or fitness for purpose of the goods and/or services or any of the goods and/or services are excluded.
- b) BIT shall be under no liability whatsoever (whether direct, indirect or loss of profit) to the Customer for any loss, damage, liability or injury suffered by the Customer arising out of a breach by BIT of this Agreement.

- 2.2 Where the goods and/or services are subject to an express warranty given by the manufacturer thereof or the parties supplying the same to BIT in either case being a warranty upon which BIT relies, then the terms of such express warranty shall be deemed to be incorporated herein but without creating any privity of contract between the Customer and such manufacturers or suppliers to BIT and in such case where a claim is made by the Customer under such warranty the judgement of the manufacturer or supplier as the case may be, as to whether or not there has been a breach of the said warranty shall be final and binding upon BIT and the Customer.

- 2.3 If goods are used by unqualified tradesmen, or fitted in an untradesmanlike manner, or adapted to a use to which they are not specifically intended, or added to components not recommended or approved by the manufacturer, then BIT excludes any liability whatsoever.

- 2.4 If services commissioned are insufficient to achieve the particular purpose for which the services were required or the result that the Customer desires is not achieved due to the Customer providing insufficient, inaccurate or incorrect instructions to BIT, then BIT excludes any liability whatsoever.

3 PASSING OF RISK AND TRANSFER OF TITLE OF GOODS

- 3.1 The risk of the goods shall pass to the Customer upon payment whether delivery has been made or not. Where delivery has been delayed through the fault of either Customer or BIT the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault. For clarity, where the Customer has ordered and received goods but not yet made payment the risk shall pass to the Customer upon the goods being collected by the Customer or its agent.

- 3.2 If the goods are ascertained and in a deliverable state, or if the goods are not yet ascertained nor in a deliverable state when the goods are ascertained and deliverable, then the title in the goods then passes to the Customer when the goods are delivered to the Customer.

- 3.3 The Customer shall be responsible for the safe-handling and storage of the goods, and compliance with all relevant statutes and regulations, from the time of delivery.

- 3.4 The Customer indemnifies BIT, and BIT excludes all liability or responsibility whatsoever, for any discharge, omission or escape of goods or damage caused by the goods after the time of delivery.

- 3.5 Insurance

Unless otherwise agreed by the parties in writing, during the delivery of any Equipment

and while the Equipment and any of the customers own equipment or software is held on your behalf by BIT, permanently or temporarily, you shall bear the risk of and you agree to carry adequate insurance against any loss or damage to the Equipment and to any of your own equipment and/or software (as the case may be), regardless of whether you have paid for the Equipment.

4 PPSA: SECURITY FOR PAYMENT

- 4.1 The Customer grants a security interest to BIT, and BIT may register the security interest, in all goods sold and/or services supplied by BIT to the customer from time to time, together with all proceeds (including, without limitation, accounts receivable, chattel paper, negotiable instruments, investment securities and inventory), to secure payment of the purchase price.
- 4.2 Words herein have the same meaning as that which is given to them in Section 16 of the Personal Property Securities Act ("the PPSA"). BIT does not have to provide a Verification Statement to the Customer. The Customer agrees that nothing in sections 114(1)(a), 117(1)(c), 133 and 134 of the PPSA shall apply to these terms and conditions. The Customer agrees that its rights as debtor in sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131, and 132 of the PPSA shall not apply to these terms and conditions.
- 4.3 The Customer will immediately notify BIT in writing of any change to the Customer's name or other material identifying characteristics of either the Customer or the Goods purchased.
- 4.4 The Customer must reimburse BIT for all costs, expenses and other charges incurred, expended or payable by BIT in relation to registration of a financing statement or financing change statement.
- 4.5 The Customer agrees that if at any relevant time, BIT does not have priority over all other secured parties in relation to any collateral, then the Customer and BIT will, for the purposes of section 109(1) of the PPSA, be deemed, in accordance with the entitlement to do so under section 107(1) of the PPSA, to have contracted out of that section but specifically on the basis that, as between them and for the purposes of this security agreement and the operation and application of the PPSA, that section 109(1) (but amended only by the deletion of the words "with priority over all other secured parties") is reinstated and contracted back into.

5 DELIVERY OF GOODS TO CARRIER

- 5.1 Subject to the BIT Credit Application Form, the Customer is responsible for arranging the carriage of the goods from BIT's premises to the Customer's premises. Where BIT agrees to send the goods to the Customer then:
 - a) Delivery of the goods to the Customer, or, delivery of the goods to a carrier, either named by the Customer or failing such naming to a carrier at the discretion of BIT for the purpose of transmission to the Customer.
 - b) Unless the Customer requires in writing otherwise, BIT shall make such contract with the carrier at limited carrier's risk within the meaning of the Carriage of Goods Act 1979.
 - c) BIT shall not be responsible to take steps to insure goods during carrying against loss due to any cause or deterioration.
- 5.2 If BIT shall arrange for carriage of the goods to the Customer's address, the costs of carriage and reasonable insurance shall be paid for in full by the Customer without any setoff or other withholding whatever and shall be due on the date for payment of the price. The carrier shall be deemed to be the Customer's agent.
- 5.3 Where there is no agreement that BIT shall send the goods to the Customer, delivery to

a carrier at limited carrier's risk at the expense of the Customer is deemed to be delivery to the Customer.

- 5.4 The Customer agrees that BIT is entitled to recover the actual freight costs plus all reasonable associated expenses. This includes but is not limited to packaging and administration costs.

6 INSTALLMENTS OF GOODS

- 6.1 Subject to the BIT Credit Application Form:
- a) BIT may make part delivery of any order and each such part delivery shall constitute a separate contract of supply.
 - b) Where it is agreed that BIT shall deliver goods by stated instalments which are to be separately paid for then if BIT makes defective deliveries in respect of an instalment or the Customer refuses to take delivery of or pay for an instalment, then BIT may treat the breach as a severable breach. The Customer may not treat the whole contract as repudiated.

7 DELIVERY: WRONG QUANTITY, DEFECTS, DAMAGE, LOSS OR NON DELIVERY

- 7.1 Subject to the BIT Credit Application Form, where BIT delivers to the Customer the goods BIT agreed to sell mixed with goods of a different description from that ordered, the Customer may accept the goods which are in accordance with this Agreement and reject the rest or the Customer may reject the whole.
- 7.2 Subject to the BIT Credit Application Form, where BIT supplies to the Customer services BIT agreed to upon instructions from the Customer combined with additional/ varied services from that instructed by the Customer, the Customer agrees to accept the services supplied as a whole.
- 7.3 The Customer shall inspect the goods upon delivery and shall within **five (5) working days** of delivery notify (quoting receipt number and date of receipt of goods) BIT in writing of any alleged defect, shortage in quantity, damage or failure to comply with description or sample. The Customer shall afford BIT an opportunity to inspect the goods within a reasonable time following notice and before any use is made of them. If the Customer shall fail to comply with these provisions the goods shall be conclusively presumed to be in accordance with the agreement and free from any defect or damage which would be apparent on a reasonable examination of the goods and the Customer shall be deemed to have accepted the goods. Notwithstanding the receipt by BIT of any such notice a clear signature on a carrier's delivery advice sheet shall be deemed to signify receipt of the quantity of goods indicated on the advice sheet.
- 7.4 Any credits sought for goods returned under Clause 7.3 are at BIT's discretion and:
- a) The goods must be returned by the Customer within **30 days** of receipt of goods;
 - b) The Customer shall bear all costs of return freight and the goods must be received by BIT free from freight charges;
 - c) The goods must be in unused, as new and good saleable condition in the manufacturer's or supplier's original containers, unsoiled and undamaged; and
 - d) The goods must be accompanied by documents showing purchase order number, invoice number and date of purchase.
- 7.5 BIT shall not be liable for any loss or damage whatever due to failure by BIT to deliver the goods (or any of them) promptly or at all. Any agreed delivery date is an estimate only. Notwithstanding that BIT may have delayed or failed to deliver the goods (or any of them) promptly or by the agreed delivery date, the Customer shall be bound to accept delivery and to pay for the goods in full.
- 7.6 The Customer must notify BIT of any query the Customer has relating to the tax

invoice within **five (5) working days** of receipt of the tax invoice by the Customer at the customer's postal address. If the Customer fails to comply with these provisions then the tax invoice shall be conclusively presumed to be correct.

7.7 BIT is not liable for any shortages or damage to goods where the goods are left on BIT's premises unattended following delivery, or on the Customer's premises following transmission to the Customer.

7.8 The Customer agrees that where products comprising software by electronic delivery have been installed and any such software licence activated then it is not reasonable for BIT to remove such software or to de-activate the software. The Customer agrees that once they have ordered any such software the Customer is committed to that purchase and subject to this Agreement the software cannot be returned unless BIT agrees in writing. Such request must be made by the Customer within five (5) days of invoice.

8 LIEN ON GOODS

8.1 Where BIT has not received or not paid in entirety the whole of the price for goods (or work or services done upon the goods), or where a bill of exchange or other negotiable instrument or the like has been dishonoured, BIT shall have rights that include:

- a) A lien on the goods;
- b) The right to retain them for the price while BIT is in possession of them;
- c) A right of stopping the goods in transit whether or not delivery has been made or title has passed;
- d) A right of resale; and
- e) The foregoing right of disposal,

8.2 Provided that the lien of BIT shall continue despite the commencement of proceedings or judgment for the price having been obtained.

9 SALE NOT RESCINDED BY OBLIGATION OF CUSTOMER TO PAY DESPITE LIEN, STOPPAGE IN TRANSIT OR ALTERNATIVE RECOVERY

9.1 Subject to this Agreement, the Customer's obligation to pay the price of the goods sold is not discharged by the mere exercise by BIT as an unpaid seller and/or supplier of the right of lien or retention or stoppage in transit or sale of the goods or part of them.

9.2 Subject to this Agreement, the Customer's obligation to pay the price of the services supplied is not discharged by the mere exercise by BIT as an unpaid seller and/or supplier of any rights to recovery of such costs in addition to or as well as any alternative methods exercised by BIT to recover an unpaid price.

9.3 A transferee acquires a good title as against the Customer where BIT as an unpaid seller and/or supplier have exercised the right of lien or retention or stoppage in transit and resells the goods.

9.4 Where BIT as the unpaid seller and/or supplier gives reasonable notice to the Customer of the intention to resell, and the Customer does not within a reasonable time pay or tender the price, the unpaid BIT may resell the goods and recover from the Customer damages for any loss.

9.5 The sale by BIT in terms of the lien or stoppage in transit or rights of resale for non-payment are always without prejudice to any claim BIT may have for loss, and BIT may claim from the Customer for any other loss after payment of all expenses, directly or indirectly resulting from the breach of this Agreement by the Customer.

10 SOFTWARE AND SUBSCRIPTION RELATED SERVICES

- 10.1 The customer must not use any of the software, subscriptions or hardware supplied by BIT for the purpose of any lawful purposes.
- 10.2 The customer will use software supplied by BIT in accordance with the documentation and advice provided by BIT and only for the numbers permitted and will inform BIT should you require any additional license.
- 10.3 The customer will not copy, resell or transfer any software or subscriptions.
- 10.4 The customer will not assign, rent, lease, or lend any software without prior consent of BIT.

11 GENERAL

- 11.1 BIT reserves the right to vary these Terms and Conditions without providing written notice to the Customer. Such variations will thereafter apply to subsequently supplied goods and/or services. Any amended Terms and Conditions will be dated and available for review on BIT's website.
- 11.2 Subject to the BIT Credit Application Form which incorporates by reference the Terms and Conditions contained herein, where the Terms and Conditions are at variance with any other documents relating to the order of the goods and/or supply of services specified herein (including a Customer's order form), the Terms and Conditions shall prevail. Any usage of trade, special agreement, or course of dealing between the parties at variance with the terms of this Agreement is excluded.
- 11.3 If any term of this Agreement is illegal, invalid or unenforceable for any reason whatsoever including, but without limitation, legislation or other provisions having the force of law or any decision of any court or other body or authority having jurisdiction, such term will be deemed to be deleted from this Agreement on condition that if either party considers that any such deletion substantially affects or alters the commercial basis of this Agreement it may give notice in writing to the other to terminate this Agreement immediately.
- 11.4 Any notice, document, request, demand or other communication ("notices") to be given for the purposes of this Agreement must be in writing. BIT may give written notices by email. Time is of the essence.
- 11.5 BIT may also delay delivery due to force majeure conditions including an act of God, fire, act of government or state, war, civil commotion, insurrection, embargo, prevention from or hindrance in obtaining any raw materials, energy or other supplies, labour disputes of whatever nature and any other reason beyond the control of BIT.
- 11.6 The law of New Zealand including the Sale of Goods Act 1908 and its amendments shall apply to this Agreement except to the extent expressly negated or varied by this Agreement.
- 11.7 If BIT grants the Customer any time, release or other indulgence, BIT reserves the right to later enforce that obligation or any other term or condition.
- 11.8 Interpretation:
 - a) "BIT Credit Application Form" means the delivery receipt and/or tax invoice used by BIT. If there is a conflict between the BIT Credit Application Form and tax invoice, the tax invoice prevails.
 - b) "Customer" means the Customer specified on the BIT Credit Application Form.
 - c) "BIT" means Business IT Limited together with BIT's staff, agents and people with authority acting on behalf of BIT.
 - d) "Terms & Conditions" means the terms and conditions of trade of Business IT Limited specified herein. The use of "Terms and Conditions" and "this Agreement" are used interchangeably throughout.

- e) Headings are inserted for convenience and reference only and shall not affect the meaning or interpretation of this Agreement.

12 PRIVACY AND CONFIDENTIALITY

- 12.1 The Customer authorises and directs BIT to seek and obtain from and supply any information concerning the credit or business standing of the Customer to any other person whether trader, merchant, firm, organisation, company, or any agency of source whatever including any credit agency or association or the like and directs any such person to supply or receive and record such information to and from BIT. While the Customer continues to be a customer or an amount is due from the Customer to BIT, BIT is authorised to obtain repeat credit checks from time to time.
- 12.2 All telephone calls may be recorded. BIT will keep a record of all contact and communication with the Customer including credit details, order information and or other personal information.
- 12.3 BIT will maintain as confidential all information that we obtain from the Customer in providing Goods and/or Services to you. BIT will not use such information for any reason other than is necessary for providing goods and/or services to the Customer and protecting BIT's interests. This obligation will not apply to information that is available publicly or that we are required to disclose by law.
- 12.4 The Customer agrees and authorises BIT to collect, retain, use and provide BIT's staff and/or agents with any of the Customer's personal information for the purposes of BIT's marketing, assessing and approving the Customer's credit, to assist BIT in meeting its obligations to you, and BIT enforcing its rights against you as the Customer.
- 12.5 The Customer agree that BIT may store your information off-site and/or overseas. Your information may be backed up and held by a third party. BIT believes any information will be securely held however BIT will not be liable for a breach of confidentiality by any third party.

13 CONSUMERS GUARANTEES ACT 1993 AND LIABILITY

- 13.1 If the Customer is acquiring goods and/or services from BIT for the purposes of a business, as defined in the Consumer Guarantees Act 1993, then BIT excludes the guarantees contained in the Consumer Guarantees Act.
- 13.2 The Customer warrants that it will advise its customers as to the purposes for which the goods and/or services can be used correctly and that the Customer will effectively and in writing contract out of the Consumer Guarantees Act 1993 whenever the Customer agrees to supply goods and/or services to a customer for the purposes of that customer's business.
- 13.3 BIT will not be liable for any loss of profits or savings, loss of goodwill or opportunity, loss or corruption of data, or inefficient use of Customer's time or any loss, damage, cost, or expense arising directly or indirectly from any good or services BIT has supplied to the Customer, even if BIT had been advised of the possibility of such loss, damage, cost or expense occurring.
- 13.4 To the extent permitted by New Zealand law, BIT's liability under any claim will not exceed the amount payable by the Customer in accordance with BIT's invoice for the goods and/or services.

14 RESOLUTION OF DISPUTES

- 14.1 Consumer arbitration agreement:
a) This Agreement contains an arbitration agreement.

- b) You, if purchasing as a consumer as defined in the Arbitration Act 1996, certify that: having read and understood the arbitration agreement, and the variation of the default rules in the 2nd Schedule to the Arbitration Act 1996, you agree to be bound by the arbitration agreement.
- 14.2 If the parties are unable to resolve any question, dispute of difference arising under this agreement, by discussion and negotiation, the dispute must be submitted to the arbitration of a single arbitrator agreed on between the parties, or in default of agreement, to be nominated by the president of the New Zealand Law Society PROVIDED HOWEVER that BIT has the right to refer any dispute to the Disputes Tribunal for determination in which case the total amount in respect of which an order of the Tribunal is sought will not exceed \$15,000.00.