

1. Definitions

- 1.1 "SMB" means SMB IT Services Limited, its successors and assigns or any person acting on behalf of and with the authority of SMB IT Services Limited.
- 1.2 "Client" means the person/s purchasing the Goods/Services as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 "Goods/Services" means all goods and services (including software and hardware) supplied by SMB to the Client at the Client's request from time to time.
- 1.4 "Price" means the Price payable for the Goods/Services as agreed between SMB and the Client in accordance with clause 4 below.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts Delivery of the Goods/Services.
- 2.2 These terms and conditions may only be amended with SMB's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and SMB.
- 2.3 The Client shall as soon as practicable make available to SMB all information, documents, software, hardware, and other particulars required by SMB for the supply of Goods/Services.
- 2.4 The Client acknowledges that any advice or recommendations are provided by SMB on the basis of SMB's industry knowledge and experience only and as such shall not be deemed to be specialist advice.
- 2.5 The Client acknowledges that it is their responsibility to ensure that the specifications provided to SMB (in writing) for the supply of Goods/Services are in sufficient detail to satisfy SMB's requirements of interpretation and understanding. SMB shall not accept any liability for the supply of Goods/Services contrary to the Client's intention due to insufficient or inadequate provision of detailed specifications by the Client.

3. Change in Control

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

4. Price and Payment

- 4.1 At SMB's sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by SMB to the Client; or
 - (b) the Price as at the date of Delivery according to SMB's current price list; or
 - (c) SMB's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of twenty (20) days.
- 4.2 SMB reserves the right to change the Price if a variation to SMB's quotation is requested, or as a result of any changes to the plan or specifications of the Goods/Services (including, but not limited to, additional Goods/Services required due to hidden or unidentifiable difficulties not evident prior to Delivery), or as a result of fluctuations in foreign exchange rates, international freight or insurance charges, or increases beyond SMB's control in the cost of materials or labour.
- 4.3 At SMB's sole discretion, a non-refundable deposit may be required.
- 4.4 Time for payment for the Goods/Services being of the essence, the Price will be payable by the Client on the date/s determined by SMB, which may be:
 - (a) on Delivery;
 - (b) by way of instalments/progress payments in accordance with SMB's payment schedule;
 - (c) for certain approved Clients, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by SMB.
- 4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and SMB.
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to SMB an amount equal to any GST SMB must pay for any supply of Goods/Services by SMB under this or any other agreement. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

5. Delivery of Goods/Services

- 5.1 Delivery ("Delivery") is taken to occur at the time that:
 - (a) the Client or the Client's nominated carrier takes receipt of the Goods/Services, by collection, at SMB's address; or
 - (b) SMB (or SMB's nominated carrier) makes Delivery of the Goods/Services to the Client's nominated address, even if the Client is not present at the address.
- 5.2 At SMB's sole discretion, Delivery costs are either included in, or in addition to, the Price.
- 5.3 The Client must take Delivery (either by receipt or collection) whenever the Goods/Services are tendered for Delivery. In the event that the Client is unable to take Delivery as arranged, then SMB shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 5.4 Any time specified by SMB for Delivery is an estimate only and SMB will not be liable for any loss or damage incurred by the Client as a result of Delivery being late. However both parties agree that they shall make every endeavour to enable Delivery to be made at the time and place as was arranged between both parties. In the event that SMB is unable to make Delivery as agreed solely due to any action or inaction of the Client then SMB shall be entitled to charge a reasonable fee for redelivery at a later time and date.

6. Risk

- 6.1 Risk of damage to or loss of the Goods/Services passes to the Client on Delivery and the Client must insure the Goods/Services on or before Delivery.
- 6.2 If any of the Goods/Services are damaged or destroyed following Delivery, but prior to ownership passing to the Client, SMB is entitled to receive all insurance proceeds payable for the Goods/Services. The production of these terms and conditions by SMB is sufficient evidence of SMB's rights to receive the insurance proceeds without the need for any person dealing with SMB to make further enquiries.
- 6.3 If the Client requests SMB to leave Goods/Services outside SMB's premises for collection or to make Delivery of the Goods/Services to an unattended location then such Goods/Services shall be left at the Client's sole risk.
- 6.4 SMB shall not be held liable for any loss, corruption, or deletion of files or data (including, but not limited to software programmes) resulting from the Goods/Services. It is the sole responsibility of the Client to back-up any data which they believe to be important, valuable, or irreplaceable prior to the Delivery. The Client accepts full responsibility for the Client's software and data, and SMB is not required to advise or remind the Client of appropriate backup procedures.
- 6.5 All third-party software is provided at the Client's own risk and is not in any way warranted by SMB, nor shall SMB be in any way responsible for the implementation or effects of any "patches", "updates", or "fixes" offered by the manufacturer of the software.
- 6.6 Whilst SMB shall take all care to ensure the Client's hardware is maintained, SMB accepts no responsibility for any inadvertent loss or damage to the hardware.

7. Title

- 7.1 SMB and the Client agree that ownership of the Goods/Services shall not pass until:
- (a) the Client has paid SMB all amounts owing to SMB; and
 - (b) the Client has met all of its other obligations to SMB.
- 7.2 Receipt by SMB 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.
- 7.3 It is further agreed that:
- (a) until ownership of the Goods/Services passes to the Client in accordance with clause 7.1 that the Client is only a bailee of the Goods/Services and must return the Goods/Services to SMB on request.
 - (b) the Client holds the benefit of the Client's insurance of the Goods/Services on trust for SMB and must pay to SMB the proceeds of any insurance in the event of the Goods/Services being lost, damaged or destroyed.
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods/Services other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods/Services then the Client must hold the proceeds of any such act on trust for SMB and must pay or deliver the proceeds to SMB on demand.
 - (d) the Client should not convert or process the Goods/Services or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of SMB and must sell, dispose of or return the resulting product to SMB as it so directs.
 - (e) the Client irrevocably authorises SMB to enter any premises where SMB believes the Goods/Services are kept and recover possession of the Goods/Services.
 - (f) SMB may recover possession of any Goods/Services in transit whether or not delivery has occurred.
 - (g) the Client shall not charge or grant an encumbrance over the Goods/Services nor grant nor otherwise give away any interest in the Goods/Services while they remain the property of SMB.
 - (h) SMB may commence proceedings to recover the Price of the Goods/Services sold notwithstanding that ownership of the Goods/Services has not passed to the Client.

8. Personal Property Securities Act 1999 ("PPSA")

- 8.1 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/Services previously supplied by SMB to the Client (if any) and all Goods/Services that will be supplied in the future by SMB to the Client.
- 8.2 The Client 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 SMB may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, SMB for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods/Services charged thereby;
 - (c) not register a financing change statement or a change demand without the prior written consent of SMB; and
 - (d) immediately advise SMB of any material change in its business practices of selling the Goods/Services which would result in a change in the nature of proceeds derived from such sales.
- 8.3 SMB and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 8.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 8.5 Unless otherwise agreed to in writing by SMB, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 8.6 The Client shall unconditionally ratify any actions taken by SMB under clauses 8.1 to 8.5.

9. Security and Charge

- 9.1 In consideration of SMB agreeing to supply the Goods/Services, 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).
- 9.2 The Client indemnifies SMB from and against all SMB's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising SMB's rights under this clause.

- 9.3 The Client irrevocably appoints SMB and each director of SMB as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 9 including, but not limited to, signing any document on the Client's behalf.
- 10. Client's Disclaimer**
- 10.1 The Client hereby disclaims any right to rescind, or cancel any contract with SMB or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by SMB and the Client acknowledges that the Goods/Services are bought relying solely upon the Client's skill and judgment.
- 11. Defects**
- 11.1 The Client shall inspect the Goods/Services on Delivery and shall within fourteen (14) days of such time (being of the essence) notify SMB of any alleged defect, error or omission, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford SMB an opportunity to inspect the Goods/Services within a reasonable time following Delivery if the Client believes the Goods/Services are defective in any way. If the Client shall fail to comply with these provisions the Goods/Services shall be presumed to be free from any defect or damage. For defective Goods/Services, which SMB has agreed in writing that the Client is entitled to reject, SMB's liability is limited to either (at SMB's discretion) replacing the Goods/Services or repairing/rectifying the Goods/Services.
- 11.2 Goods/Services will not be accepted for return other than in accordance with 11.1 above.
- 12. Returns**
- 12.1 Returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 11.1; and
 - (b) SMB has agreed in writing to accept the return of the Goods/Services; and
 - (c) the Goods/Services are returned at the Client's cost within fourteen (14) days of Delivery; and
 - (d) SMB will not be liable for Goods/Services which have not been stored or used in a proper manner; and
 - (e) the Goods/Services 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.
- 12.2 Non-stocklist items or Goods/Services made to the Client's specifications are under no circumstances acceptable for credit or return.
- 13. Warranty**
- 13.1 For Goods/Services not manufactured by SMB, the warranty shall be the current warranty provided by the manufacturer of the Goods/Services. SMB shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods/Services. In the event that hardware is upgraded, or replaced, the standard manufacturer's warranty shall apply only to the applicable parts.
- 13.2 In the case of second hand Goods/Services, the Client acknowledges that he has had full opportunity to inspect the same and that he accepts the same with all faults and that no warranty is given by SMB as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. SMB shall not be responsible for any loss or damage to the Goods/Services, or caused by the Goods/Services, or any part thereof however arising.
- 14. Consumer Guarantees Act 1993**
- 14.1 If the Client is acquiring Goods/Services 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/Services by SMB to the Client.
- 15. Intellectual Property**
- 15.1 Where SMB has designed, drawn, created or developed Goods/Services for the Client, then the copyright in any designs, software, systems, solutions, drawings, specifications and documents shall remain the property of SMB, and the Client may use the Goods/Services only:
- (a) if the Client has paid for those Goods/Services in full; and
 - (b) for the purpose for which they were intended and supplied by SMB.
- 15.2 The Client warrants that all designs, specifications or instructions given to SMB will not cause SMB to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify SMB against any action taken by a third party against SMB in respect of any such infringement.
- 15.3 The Client agrees that SMB may (at no cost) use for the purposes of marketing or entry into any competition, any designs, software, systems, solutions, drawings, specifications, documents or Goods/Services which SMB has created for the Client.
- 15.4 Where SMB has supplied third-party computer software (and associated documentation, SMB retains ownership of the computer software and documentation, but grants the Client a non-exclusive and non-transferable licence for its use (solely in relation to the operation of the Client's own business). The Client agrees to use any third-party software supplied by SMB, and identified as such, strictly in compliance with the terms of the licence under which it is supplied. The Client further agrees that they shall not:
- (a) use in any way, or rely on the software for any purpose other than what it was designed or is suitable for;
 - (b) combine the software with any other software;
 - (c) copy, reproduce, translate, adapt, vary, merge, modify, or create any derivative work based on the software;
 - (d) reverse engineer, decompile, disassemble, reconfigure or otherwise attempt to discover the source code of the software, or assist another party to do the same;
 - (e) sell, market, network, transfer, lease, licence, sub-licence, rent, lend, or otherwise distribute, the software in any way whatsoever;
 - (f) use the software to commit a crime (including, but not limited to, sending spam) and the Client agrees to indemnify SMB against any action taken by a third party against SMB in respect of any such infringement.
- 15.5 If during the course of supplying the Goods/Services, SMB develops, discovers, or puts into operation a new concept, product or process which is capable of being patented, then such concept, product or process shall be and remain the property of SMB and the Client shall not use or supply the same in any way whatsoever without first obtaining the written consent of SMB.

- 15.6 Where SMB has designed Goods/Services for the Client to use, then the Client undertakes to acknowledge SMB's intellectual property in those Goods/Services in the event that images of those Goods/Services are utilised in advertising or marketing material by the Client. Further the Client agrees that SMB itself may utilise images of any Goods/Services so designed for the purposes of advertising, marketing, or entry into any competition.
- 16. Confidentiality**
- 16.1 Both parties agree that, unless they have the prior written consent of the other, they will not use or disclose to any third party (other than for the purpose of performing this agreement) the terms and conditions of this agreement or any information confidential to the other party. The obligations of this clause 16 shall survive termination or cancellation of this agreement.
- 16.2 The Client agrees to protect all authorisation details, including but not limited to usernames and passwords and agrees that those details shall not be written or stored in any manner which could result in their unauthorised disclosure.
- 16.3 In the event that SMB requests the Client to change any password or identifier as part of its Goods/Services, the Client acknowledges that SMB recommends that the Client not use commonly known details such as birthdays and or names.
- 17. Loan Equipment**
- 17.1 The Loan Equipment is, and will at all times remain, the absolute property of SMB, and the Client must return the Loan Equipment to SMB upon request to do so; nonetheless all risk for the Loan Equipment passes to the Client upon Delivery of the same.
- 17.2 The Client accepts full responsibility for the safekeeping of the Loan Equipment, and indemnifies SMB for all loss, theft, or damage to the Loan Equipment (howsoever caused), and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Client.
- 17.3 The Client will insure, or self-insure, SMB's interest in the Loan Equipment 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 adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Loan Equipment. Further the Client will not use the Loan Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 17.4 The Client accepts full responsibility for and shall keep SMB indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons, damage to property, or otherwise arising out of the use of the Loan Equipment during the loan period and whether or not arising from any negligence, failure or omission of the Client or any other persons.
- 17.5 If the Client fails to return the Loan Equipment to SMB as is required under this agreement or when requested to do so, then SMB or SMB's agent may (as the invitee of the Client) enter upon and into any land and premises owned, occupied or used by the Client, or any premises where the Loan Equipment is situated and take possession of the Loan Equipment, without being responsible for any damage thereby caused. Any costs incurred by SMB as a result of SMB so repossessing the Loan Equipment shall be charged to the Client.
- 17.6 The Client is not authorised to pledge SMB's credit for repairs to the Loan Equipment, or to create a lien over the Loan Equipment in respect of any repairs.
- 17.7 The Client shall:
- notify SMB immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Client is not absolved from the requirements to safeguard the Loan Equipment by giving such notification;
 - use the Loan Equipment only for its intended use, and in accordance with any manufacturer's instruction whether supplied by SMB or supplied with the Loan Equipment;
 - keep the Loan Equipment in their own possession and control and shall not assign the benefit of the Loan Equipment, nor be entitled to take a lien, or grant any encumbrance over the Loan Equipment;
 - not alter or make any additions to the Loan Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Loan Equipment or in any other manner interfere with the Loan Equipment;
 - use the Loan Equipment solely for the Client's own use, and shall not permit the Loan Equipment (or any part thereof) to be used by any other party for any other purpose.
- 17.8 Immediately on request by SMB, the Client will pay:
- the new list price of any Loan Equipment, accessories or consumables that are for whatever reason destroyed, damaged, lost or not returned to SMB;
 - the cost of repairing any damage to the Loan Equipment caused by wilful or negligent actions of the Client or the Client's employees, by vandalism, or (in SMB's reasonable opinion) in any way whatsoever other than by the ordinary use of the Loan Equipment by the Client;
 - any insurance excess payable in relation to a claim made by either the Client or SMB in relation to any damage caused by, or to, the Loan Equipment whilst the same is in the possession of the Client, and irrespective of whether charged by the Client's insurers or SMB's.
- 18. Default and Consequences of Default**
- 18.1 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 SMB's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 18.2 If the Client owes SMB any money the Client shall indemnify SMB from and against all costs and disbursements incurred by SMB in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, SMB's collection agency costs, and bank dishonour fees).
- 18.3 Without prejudice to any other remedies SMB may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions SMB may suspend or terminate the supply of Goods/Services to the Client. SMB will not be liable to the Client for any loss or damage the Client suffers because SMB has exercised its rights under this clause.
- 18.4 Without prejudice to SMB's other remedies at law SMB shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to SMB shall, whether or not due for payment, become immediately payable if:
- any money payable to SMB becomes overdue, or in SMB's opinion the Client will be unable to make a payment when it falls due;

- (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.

19. Cancellation

- 19.1 SMB may cancel any contract to which these terms and conditions apply or cancel delivery of Goods/Services at any time before the Goods/Services are delivered by giving written notice to the Client. On giving such notice SMB shall repay to the Client any money paid by the Client for the Goods/Services. SMB shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.2 In the event that the Client cancels delivery of Goods/Services the Client shall be liable for any and all loss incurred (whether direct or indirect) by SMB as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 19.3 Cancellation of orders for Goods/Services made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

20. Privacy Act 1993

- 20.1 The Client authorises SMB or SMB's agent to:
 - (a) access, collect, retain and use any information about the Client;
 - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Client.
 - (b) disclose information about the Client, whether collected by SMB from the Client directly or obtained by SMB 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.
- 20.2 Where the Client is an individual the authorities under clause 20.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 20.3 The Client shall have the right to request SMB for a copy of the information about the Client retained by SMB and the right to request SMB to correct any incorrect information about the Client held by SMB.

21. Unpaid SMB's Rights

- 21.1 Where the Client has left any item with SMB for repair, modification, exchange or for SMB to perform any other service in relation to the item and SMB has not received or been tendered the whole of any moneys owing to it by the Client, SMB shall have, until all moneys owing to SMB are paid:
 - (a) a lien on the item; and
 - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 21.2 The lien of SMB shall continue despite the commencement of proceedings, or judgment for any moneys owing to SMB having been obtained against the Client.

22. General

- 22.1 The failure by SMB to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect SMB's right to subsequently enforce that provision. 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.
- 22.2 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.
- 22.3 SMB 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 SMB of these terms and conditions (alternatively SMB's liability shall be limited to damages which under no circumstances shall exceed the Price).
- 22.4 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 SMB nor to withhold payment of any invoice because part of that invoice is in dispute.
- 22.5 SMB may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 22.6 The Client agrees that SMB may amend these terms and conditions at any time. If SMB makes a change to these terms and conditions, then that change will take effect from the date on which SMB notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for SMB to supply Goods/Services to the Client.
- 22.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 22.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.