



## Terms And Conditions

## 1.1. What Is The Purpose Of These General Conditions?

1.1.1. These General Conditions set out the general terms and conditions that apply to the relationship between the Customer ("you" and "your") and **Network Service Providers** Limited also known as **NSP** ("we", "us" and "our") and supplement and are to be read together with the provisions of (and deemed to form part of) the Master IT Services Agreement and all Service Agreements and Terms of Trade. A reference to NSP, the Customer, we or you (or similar expressions) in this Agreement is a reference also to that party's executors, administrators, successors and permitted assigns.

## 1.2. What Information About You Can We Collect?

1.2.1. You agree to provide us with and allow us to use information necessary to give effect to this Agreement and provide you with the products and services ("your information"). We will not hold your information longer than required for the purposes of its collection.

1.2.2. Unless your consent is withdrawn in writing, you agree to us disclosing any of your information:

- to give effect to or enforce our obligations under this agreement or additional agreement;
- when authorised by you or required by law;
- to assess your creditworthiness; and
- to market any of our products and services to another person or entity.

1.2.3. We will not use your information unless we have reasonably ensured it is accurate, complete, relevant and not misleading. If we give your information to another entity we will do everything reasonably within our power to prevent unauthorised use or disclosure of your information.

1.2.4. You may access any of your information and ask us to correct any mistakes.

## 1.3. What Are Our Products And Services?

1.3.1. "Products and services" means and includes without limitation:

- all goods, inventory, units, technology, electronic data, software, applications, electric stores and devices and documents (whether separate, attached to something or performed work on);
- design, consultation, construction, procurement, networking, hosting, protection, recovery, backup, management, repair and maintenance, labour; and out of pocket expenses, provided by us and identified in any purchase order, account, finance agreement, application, order form, packing slip, wholesale list, email, supply request, quote, invoice, statement or other document issued by either party, all of which are deemed to be incorporated into and form part of this agreement; or as ours by marking or manner of storage enabling identification as ours.

## 1.4. What Is The Price?

1.4.1. The price is the cost of the products and services as agreed between you and us from time to time subject to GST and out of pocket expenses such as freight. If no price is stated, the price will be the cost that we provide the products and services at the time of your order. The price is subject to reasonable changes.

1.4.2. Labour service fees will be due in accordance with the service rates specified on our published rate card. Smarti Managed Service fees, Cloud Services, Hosted Services or Network Connections, will be specified in your Service Agreement. If no Service Agreement is entered into the service rate will be our standard hourly rate.

## 1.5. What Happens When We Give You A Quote?

1.5.1. All quotes for products and services are:

- valid from the date of issue for the period stated on the quote; if no period is stated then the quote is valid for 14 days;
- exclusive of GST and freight, unless stated otherwise;
- based on the information provided by you, the accuracy of which is your responsibility; and;
- subject to change due to circumstances beyond our control or error.

1.5.2. You will be responsible for increased costs or receive the benefit of decreased costs resulting from any subsequent change to the quote due to inadequate or inaccurate information, requirement for additional products and services or variations.

## 1.6. When And How Do You Pay Us?

1.6.1. Subject to 6.2, you agree to pay us in full:

- for software and hardware, on or before the 7th day following the date of delivery/pick up, unless agreed otherwise;
- for services, on or before the 20th of the month following the date of our invoice;
- for project work, a deposit/advance payment, progress payments and the balance on receipt of our invoice;
- for interest on any amount you owe after the due date at a rate of 2.5% per month or part month other than for that part of an invoice which is the subject of a legitimate dispute;
- for expenses incurred as a result of enforcing any of our rights contained in this Agreement including PPSR, debt collection and legal fees; without set-off, deduction or counterclaim; and a deposit if required.

1.6.2. You agree to us allocating or re-allocating any payment received from you towards any invoice. If no allocation is made then it is deemed to be in such a way that preserves the maximum value of our purchase money security interest in the products.

1.6.3. Payment is to be made in cleared funds by direct credit to our nominated bank account, unless agreed otherwise.

1.6.4. We may require a credit card retention for products and services, the value of which will be deducted from your credit card. All payments incur an extra 2.5% of the value of the invoice.

## **1.7. What Warranties Apply?**

1.7.1. Manufacturers' and third party warranties apply where applicable.

1.7.2. We will use all reasonable skill and care in providing our products and services and we warrant that our employees have requisite qualifications and competencies.

1.7.3. We are not liable for system failure or hacking caused by factors outside our reasonable control.

1.7.4. Computer systems are covered by standard warranty from the individual vendor from the date of sale or the extended warranty period if purchased, and covers defective components and their replacement. This warranty does not cover:

- misconfiguration of the computer system, erasure of software or physical damage;
- replacement of a keyboard or mouse due to general wear and tear;
- damage to the computer caused by excessive inputs mains voltage, or electrostatic charges received externally via telephone connections;
- support for correct working operation of software and peripherals not originally supplied with the computer system; and
- loss of data (though we will take care in fixing any components in the computer system, it is your responsibility to regularly backup externally to the computer system).

1.7.5. If you are in trade and/or are a business, you agree that you and we contract out of the Fair Trading Act 1986 and Consumer Guarantees Act 1993, to the extent permissible by law.

1.7.6. We are not liable for delay or failure to perform our obligations if the cause is beyond our control.

1.7.7. Subject to 7.1-7.6, if we are deemed liable to you for any loss or damage of any kind, arising from the provision of products and services to you, including consequential loss, whether suffered or incurred by you or another person or entity and whether in contract tort or otherwise, then you agree that our total liability is limited to the value of the products and services provided to you.

## **1.8. What If An Issue Relating To Your Services Arises?**

1.8.1. If an issue arises in relation to ongoing services you must notify us within seven (7) days of discovery. If an issue in relation to our services arises within three (3) months of completion of our services we will remedy the issue without added cost to you.

## **1.9. What If You Want To Return A Product?**

1.9.1. Return of products due to fault/defect is subject to:

- you providing proof of purchase for the product and notifying us within the warranty period;
- you having used the products and services for normal purposes, in accordance with operating instructions and procedures, without neglect, misuse, accident or the services of any unauthorised third party, and you are not returning the product for fair wear and tear;
- any product not being destroyed or removed from the delivery address until we have inspected the products or required the products be returned to us or waived such right;
- you will be responsible for the cost of return and our services to remedy the defect where applicable;

- we may refund, repair or replace the product or credit your account at our discretion.

1.9.2. Return of products due to incorrect/short supply or damage by us is subject to:

- you notifying us within seventy two (72) hours of delivery (non-notification is deemed acceptance of their condition);
- any product not being destroyed or removed from the delivery address until we have inspected the products or required the products be returned to us or waived such right;
- you being responsible for the cost of return; and
- we will repair or replace the product or credit your account at our discretion.

1.9.3. Return of products for reasons other than those in 9.1 and 9.2 is at our discretion and subject to:

- you providing proof of purchase;
- you notifying us within fourteen (14) days of delivery of the products;
- the product being unused and in the same resalable condition as provided;
- the product not being destroyed or removed from the delivery address until we have inspected the product or required the products be returned to us or waived such right;
- you being responsible for the cost of return;
- a restocking fee may apply; and
- we will repair or replace the products or credit your account at our discretion.

## **1.10. When Are We Responsible For The Products?**

1.10.1. We are responsible for products until they are delivered or picked up by you.

1.10.2. Delivery is complete when we give the products to you or another person/entity who will give the products to you or when we leave the products on your premises. The time and date of delivery is an estimate only and not an essential term of our agreement. We may partially deliver products listed in one order or invoice without added cost to you. If the parties agree on delivery by instalments and we fail to deliver an instalment, the failure will not give rise to a right of cancellation.

1.10.3. Risk and insurance for the products lies with the parties in accordance with 10.1 or when ownership passes in accordance with 11.1, whichever comes first.

## **1.11. What Ownership And Security Rights Do We Have?**

1.11.1. Ownership of the Products shall not pass to you until all amounts due to us (whether in relation to the Products, the Services or otherwise) have been paid in full in cleared funds.

1.11.2. Until all amounts due to us have been paid, you must:

- insure the Products from the time of delivery against all insurable risks for their full replacement value;
- not sell, lease, charge or part with possession of the Products;
- not alter, obliterate, deface, cover up or remove any identity mark indicating that the Products are our property; and
- store the Products in such a manner that they are clearly identifiable as our property.

1.11.3. You acknowledge that we have a security interest in the Products (and any proceeds of the Products) and that we may register a financing statement on the Personal Property Securities Register in respect of this Agreement.

1.11.4. You shall promptly execute any documents, provide information and do anything else required by us to ensure that the security interest created under this Agreement constitutes a first ranking perfected purchase money security interest over the Products.

1.11.5. You must provide us with written notice of a change to your name at least seven (7) days prior to changing your name.

1.11.6. You waive any right to receive a copy of the verification statement under the Personal Property Securities Act 1999 ("PPSA").

1.11.7. You agree that nothing in sections 114(1)(a), 117(1)(c), 133 and 134 of the PPSA shall apply to this Agreement.

1.11.8. You agree that your rights as debtor in sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA shall not apply to this Agreement.

## **1.12. What If You Want To Place/Vary/Cancel An Order?**

1.12.1. All orders made by you are subject to these terms. We cannot guarantee our ability to complete your order and may therefore refuse to accept or reasonably delay the same.

1.12.2. If you wish to vary or cancel an order and we have reasonably relied on your original instructions, you will still be responsible for full payment of the price of the order.

### **1.13. When Can A Party Cancel This Agreement?**

1.13.1. Subject to 12.1 and 13.2-13.4, you may cancel this Agreement at any time by giving thirty (30) days prior written notice. Where you elect to cancel this Agreement in terms of this clause 13.1, we may cancel any Service Agreement with you at any time.

1.13.2. We have the right by thirty (30) days prior written notice to suspend or cancel any part of any agreement for the provision of products and services to you (including any Service Agreement not the subject of the specific default) if you default by:

- failing to pay or indicating you will not pay any sum owing by the due date or your credit being unsatisfactory;
- any of your creditors seizing or indicating they will seize any products provided to you;
- products in your possession becoming materially damaged while any amount remains unpaid;
- being bankrupted, insolvent, under statutory management or put into liquidation;
- a receiver being appointed over or a landlord possessing any of your assets;
- a court judgment entered against you remaining unsatisfied for seven (7) days;
- breaching the terms of this Agreement or any Service Agreement; and
- an adverse material change in your financial position.

1.13.3. You agree that if you default and the default is not remedied within seven (7) days of occurrence, despite section 109 of the PPSA and in addition to the rights contained in that section, we may enter any premises occupied by you to inspect or retrieve any products and may store and/or sell any products and credit the net sale proceeds to your account for the invoice value less adjustment for the condition of the products, depreciation and loss or profit.

1.13.4. Cancellation by you under 13.1 or cancellation or suspension by us under 13.2 will not affect our claims for any amount due at the time of cancellation or suspension, damages for any breach of your obligations under this agreement and any other legal rights we may have. Upon cancellation of this agreement any amount owed by you for products and services provided to you up to and including the date of cancellation will become due and current orders terminate. You will be responsible for costs consequential to suspension or cancellation resulting from default by you.

### **1.14. What Confidentiality And Intellectual Property Rights Apply?**

1.14.1. Confidential information includes any information in any form relating to the terms or existence of this Agreement and us and our products and services, disclosed under circumstances of confidence, and which might reasonably be expected by any party to be confidential in nature.

1.14.2. You will maintain at all times, and will not at any time, directly or indirectly: disclose or permit to be disclosed to any person or entity; use for yourself; or use to the detriment of any other party; the confidential information in 14.1, except as required by law, or as is already public knowledge without breach by you, or as authorised in writing by us or to employees or agents on a need to know basis as required.

1.14.3. In order to give effect to 14.2, you will do all things reasonably required in order to protect our intellectual property and notify us immediately if you become aware of any infringement or threatened infringement by any person of any of our intellectual property.

1.14.4. We own all existing and new intellectual property rights connected to the products and services. You fully indemnify us for any intellectual property infringements we may make when acting in accordance with your instructions. You may use the products only if paid in full and for the purpose for which they were intended and supplied by us. We provide no licence for the use of trademarks, names and service marks.

1.14.5. Obligations under 14.1-14.4 survive cancellation or termination of this agreement for any reason. All confidential material must be returned to us or destroyed.

### **1.15. What Else Is Agreed?**

1.15.1. We may outsource (contract out) part of the work required to produce the products and services. You agree to pay for all amounts due in connection with the outsourcing upon agreement.

1.15.2. If we fail to enforce any of the terms of this agreement it will not be deemed to be a waiver of any of the rights or obligations we have under this agreement.

1.15.3. If any of the terms and conditions of this Agreement or any Service Agreement are determined to be invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining terms will not be affected.

1.15.4. This is the entire agreement superseding all prior agreements, representations and warranties relating to the subject matter of this Agreement. Any instructions we receive from you will be subject to this agreement.

1.15.5. If any dispute arises between the parties either party must notify the other within seven (7) days of the date of delivery/possession, or if the dispute relates to delivery within seventy two (72) hours of delivery. Any product the subject of a claim must not be destroyed or removed from the delivery address until we have inspected the product or required the product be returned to us.

1.15.6. Documentation related to this Agreement may be served on you by email.

1.15.7. We will notify you of any changes to these General Conditions and post the same on our website. [Continued provision of products and services to you will be subject to your signed acceptance of the same.] All other variations must be mutually agreed in writing.

1.15.8. We shall provide the Services to you as an independent contractor only and nothing in our business relationship with you shall be deemed to constitute us as an agent, employee or partner of you as the Customer.

1.15.9. You agree not to assign or transfer your rights and obligations under this Agreement in part or in whole without our prior written consent. We shall be entitled to assign our rights and obligations without consent where that assignment is part of the sale of our business to an entity with equivalent experience and capability.

1.15.10. This Agreement is governed by the laws of New Zealand.