

Terms & Conditions of Trade

NZTG is the trading name of New Zealand Technology Group Services Limited (“NZTG”).

These Terms and Conditions of Trade (“Conditions”) form the basis on which NZTG supplies and sells the Goods and/or Services to the Customer. Each such supply and sale shall be affected pursuant to these Conditions. Any invoices, order or other document evidencing or describing and Goods and/or Services to be supplied to the Customer shall constitute acceptance of these Conditions and is incorporated into and forms part of this contract (“the Contract”). Any additional or different terms the Customer stipulates or states in any communication with NZTG (including an order) will not bind NZTG unless NZTG first agrees to such additional or different terms in writing. No sales person, representative or agent is authorised by NZTG to give any guarantee, warranty or representation in addition to, or contrary to these Conditions.



1. PRICE AND PRICE VARIATION

Prices quoted are excluding GST unless otherwise stated. Prices do not include any delivery surcharges. NZTG shall be entitled to adjust any price quoted from time to time and the Customer agrees to pay any such adjusted price to take account of variations in the cost to NZTG of carrying out the whole or any part of the contract arising from any of the following:

- Delays in delivery or installation of the Goods and/or Services or any of them as a result of instructions or lack of instructions from the Customer, the Customer's failure or inability to fulfil the obligations under the Contract or any action or inaction by the Customer or other circumstances beyond NZTG's control;
- Variation in the cost of NZTG acquiring and supplying the Goods and/or Services directly or indirectly, on account of changes in rates of freight and transport costs, insurance, customs duties, taxes, existing tariff classifications or any variation in currency exchange rates;
- Variations in the cost of rates of all statutory, government or local government or governmental authority charges and obligations; or
- Any correction of errors or omissions on the part of NZTG or any of its representatives.

2. GST

All Goods and/or Services sold and supplied are subject to Goods and Services Tax.

3. PAYMENT

Unless otherwise agreed, the purchase price for the Goods and/or Services shall be paid to NZTG at its address by the 20th of the month following the month in which the invoice was dated. Payment will not be accepted by any means other than cash, cheque, credit card, automatic payment, direct debit or direct credit.

If any account is in dispute, the undisputed portion of the account shall be payable in accordance with the normal terms of payment as provided in 3(a). Payment of the disputed portion may be withheld provided the matter is brought to NZTG's attention immediately after it is discovered and a letter of explanation setting out the particulars of the dispute is sent to NZTG within seven days of the dispute arising.

NZTG reserves the right to suspend delivery of further Goods and to suspend supply of further Services if the terms of payment are not strictly adhered to by the Customer.

NZTG will not be liable for any losses (indirect or direct) incurred by the Customer due to the suspension of the delivery of further Goods or supply of further Services.

NZTG will charge a merchant services fee of 3% on any payments processed by credit card.

Interest is currently charged on overdue accounts at the end of the month at a rate of 2.5% (minimum \$10.00) per month compounding until payment in full.

Any expenses and other costs incurred by NZTG in recovering outstanding monies, including without limitation, debt collection fees together with all costs incurred in the recovery of the Goods, and/or legal fees on a solicitor/client basis shall be recoverable from the Customer, and the Customer shall indemnify NZTG in respect of such expenses and costs.

4. DELIVERY

NZTG shall deliver the Goods and supply the Services to the address stated on any order or request for Goods and/or Services or as agreed by NZTG in writing. NZTG shall deliver the Goods by such carrier and such form of transport NZTG consider to be appropriate.

Where the Customer specifies the carrier and the means of carriage, NZTG shall deliver the Goods in the way specified, the cost of such carriage being an additional charge to the invoiced price of the Goods.

NZTG will not be responsible for any part delivery or delay in delivery of the Goods as a result of events occurring beyond NZTG's control.

NZTG shall not be in any way responsible for any consequences (direct or indirect) arising from such delay or non-delivery.

The Customer agrees to inform NZTG within 30 days of the date of invoice if proof of delivery is required. After this period, no liability will lie with NZTG for proof of delivery.

5. PRIVACY ACT 1993

The Customer authorises NZTG to collect, retain, and use personal information about the Customer (including the information collected in this document) for the following purposes only:

- Assessing the Customer's creditworthiness;
- Disclosing to a third party details of this application and any subsequent dealings it may have with NZTG for the purpose of recovering Amounts payable by the Customer and providing credit references;
- Marketing goods and services provided by NZTG to the Customer;
- Registering a financing statement on the PPSR to give notice of the security interest created herein.

The Customer, if an individual, has a right of access to information about the Customer held by NZTG.

The Customer may request correction of that information and may require that the request be stored with that information. NZTG may charge reasonable costs for providing access to that information;

NZTG treats all customer data as confidential in content. A confidentiality agreement can be signed separately at a Customer's request.

6. INTELLECTUAL PROPERTY

Where NZTG has followed a design or instruction furnished by or given by the Customer, the Customer shall indemnify NZTG against all damages, penalties, costs and expenses incurred by NZTG or in respect of which NZTG may become liable through any work required to be done in accordance with these instructions which result in an infringement of a patent, trademark, registered design, contract or common law right.

All information prepared by NZTG including, without limitation, customised pricing, proposals, software, programmes, electronic catalogues, details of improvements and cost reductions, is the intellectual property of NZTG and cannot be copied, altered or distributed without NZTG's prior written consent.

NZTG will not be responsible for any loss as a result of a breach of NZTG's intellectual property rights. The Customer agrees to indemnify NZTG against any loss or expenses incurred (including costs on a solicitor client basis) which arises as a result of a breach of NZTG's intellectual property rights.

7. RETURN OF GOODS

NZTG will not accept the return of Goods for credit or any other purpose unless NZTG first agrees to accept the return of the Goods in writing and advises the Customer a return advice number prior to the return of Goods.

Return of Goods will only be accepted for credit within 14 days of delivery, unless any delay is due to NZTG's error. Return freight will be at NZTG's cost only when there has been an error on NZTG's part.

No returned Goods shall be accepted by NZTG (even if NZTG has previously agreed to do so) if they have been tampered with by the Customer or any other person, if they are Goods expressly sold on a non-return basis, or if they are not accompanied by the return advice number referred to in clause 7(a).

Where Goods are returned to NZTG but not accepted as above, they shall be returned to the Customer at the Customer's expense or retained by NZTG at NZTG's election. Receipt by NZTG (or by any of NZTG's agents or representatives) of any Goods returned other than in accordance with clauses 7(a) and 7(b) shall not constitute nor be deemed to constitute NZTG's acceptance of the return of the Goods for credit or any other purpose.

Any request for cancellation of services must be in writing to your account manager or NZTG Finance and is subject to a 90 day notice period unless the service(s) are contracted, in which case the cancellation date will be the later of:

- The 90 day notice period
- Contract end date

8. RISK

Risk of any loss, damage or deterioration of or to the Goods passes to the Customer on delivery.

Ownership of the Goods remains with NZTG and does not pass to the Customer until the Customer pays the full purchase price owing to NZTG in respect of those Goods, and Services relating to the possession of those Goods.

While Ownership of the Goods remains with NZTG:

NZTG authorises the Customer (as NZTG's agent, but with no authority to represent to any other person that it is NZTG's agent and without NZTG being bound by or liable under the contracts with third parties to which the Customer is a party) in the ordinary course of its business to use the Goods but not sell any of the Goods without the consent of NZTG. This authority is revoked from the time NZTG notifies the Customer that this authority is revoked.

As the Customer's agent for the purpose of this clause, may use reasonable force to enter the premises (building site) where the Goods are stored and remove them. NZTG shall exercise reasonable care in entering and removing such Goods, but shall not be liable for any damage caused by the use of reasonable force. NZTG may resell any Goods and apply the proceeds of sale in reduction of any amounts owing to NZTG by the Customer (“the Customer's Indebtedness”) as NZTG thinks fit.

The Customer must advise NZTG immediately of any of the situations as outlined at Clause 12 of these Conditions or any actions of third parties which may affect NZTG's interest in the Goods.

NZTG may apply any payments received from or on behalf of the Customer (where the Customer has not specified the purpose of the payment) in reduction of the Customer's Indebtedness as NZTG thinks fit.

If any Goods are resold before ownership of those Goods has passed to the Customer, the proceeds of such sale shall be received and held by the Customer in trust for NZTG to the extent of the Customer's Indebtedness and claimable by NZTG in the event of the Customer's default.

NZTG may bring an action for the Price of the Goods even where Ownership of the Goods has not passed to the Customer.

The Customer must insure and keep insured with a reputable insurance company all Goods in its possession or control from time to time against risk of loss or damage by hazards normally insured against. The Customer must, on request by the Company, provide evidence of such insurance cover.

For the purpose of this Clause 8 and in any case in which Goods are processed before payment of the Customer's Indebtedness, the term “Goods” includes products, parts or components which can be identified as being substantially derived from the Goods supplied by NZTG.

Until Ownership of the Goods passes to the Customer:

The Customer shall keep proper stock records and records of account with respect to its purchase, receipt, sale and parting with possession of the Goods; and

The Customer shall make those records available to NZTG at its reasonable request and upon any failure to do so (and without limiting NZTG's other rights and remedies), NZTG may enter, and use reasonable force to enter, the premises where the records are kept and have access to them, copy them and/or remove them,

9. PPSA SECURITY INTEREST

The Customer grants to NZTG a Security Interest in the Goods and their Proceeds to secure the obligation of the Customer to pay the purchase price of the Goods and any other obligations of the Customer to NZTG under these Conditions and, where the Goods and/or Proceeds are not readily identifiable and/or traceable or their recoverable value is insufficient to pay the Customer's Indebtedness, the Security Interest shall also extend to all the Customer's present and after acquired technology equipment, of which the Goods form part, to the extent required to secure the Customer's Indebtedness.

As and when required by NZTG the Customer shall, at its own expense, provide all reasonable assistance and relevant information to enable NZTG to register a Financing Statement or Financing Change Statement and generally to obtain, maintain, register and enforce NZTG's Security Interest in respect of the Goods supplied, in accordance with the Personal Property Securities Act 1999 (“PPSA”).

The Customer shall not change its name without first notifying NZTG of the new name not less than 7 days before the change takes effect.

The Customer warrants that the Goods are not purchased for use primarily for personal, domestic or household purposes.

Notwithstanding any reference to a particular invoice/order, where any sum remains outstanding by the Customer on more than NZTG invoice/order, any payments received from the Customer shall be deemed to be made by the Customer and applied by NZTG in respect of each unpaid invoice/order on a pro rata basis PROVIDED THAT where NZTG applies payments in this manner it shall not charge interest on overdue balances that would have been cleared if the payments were not allocated pro rata.

Until the Customer has paid all money owing to NZTG the Customer shall at all times ensure that:

The Goods supplied by NZTG, while in the Customer's possession, can be readily identified and distinguished; and/or

All Proceeds (in whatever form) that the Customer receives from the sale of any of the Goods are readily identifiable and Traceable.

Where the Goods are purchased by the Customer as stock in trade for sale or lease in the ordinary course of the Customer's business, nothing in this clause shall prevent the Customer from selling or leasing and delivering the goods in the ordinary course of the Customer's business.

The parties agree to contract-out of the PPSA in accordance with Section 107 of the PPSA to the extent that Section 107 applies for the benefit of, and does not impose a burden on, NZTG. The Customer waives its right to receive a Verification Statement in respect of any Financing Statement or Financing Change Statement registered by or on behalf of NZTG in respect of the Security Interest created by these Conditions.

For the purpose of this clause words and phrases starting with a capital letter shall have the respective meanings given to them under, or in the context of, the PPSA.

10. GUARANTEES & WARRANTIES

Where the Customer is not a consumer as defined in the Consumer Guarantees Act 1993 (“the CGA”), the CGA will not apply to the supply of the goods from NZTG to the Company.

The following terms apply wherever the CGA does not apply to this Contract, or where the following terms are not inconsistent with the CGA:

Defective Goods or Goods and Services which do not comply with the Conditions may at NZTG's discretion be repaired or replaced, or the price refunded. These are the sole remedies available to the Customer for default by NZTG.

Any right which the Customer may have to reject defective Goods or non-conforming Goods or Services will only be effective if:

The Customer notifies NZTG in writing within 14 days following delivery of the Goods or 30 days after supply of the Services and NZTG is given the opportunity to inspect the Goods or the supply of Services; and

The Goods are returned unused, re-saleable and/or in the condition the Customer received them.

To the extent permitted by law, NZTG expressly excludes liability for any claim by the Customer (or any other person) relating to or arising from the sale of the Goods or supply of Services which is not notified to NZTG in accordance with the provisions of Clause 10(b) above.

NZTG will not repair or replace, or refund the price of any Goods and/or Services for so long as the Customer is in default in relation to any amount owing.

NZTG accepts no liability for any claim by the Customer or any other person, including without limitation any claim relating to or arising from:

- Any conditions, warranties, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability or otherwise, whether express or implied by law, trade custom or otherwise; or
- Any representations, warranties, conditions or agreement made by any agent or representative which are not expressly confirmed by NZTG in writing; or

Any services forming part of the supply of the Goods and/or Services which have been performed by any third party; and the Customer agrees to indemnify NZTG against any such claim.

In any event, NZTG's liability under any claim shall not exceed the price of the Goods or the price of the Services. No claim may be made against NZTG for consequential damages or loss of profits.

The Customer agrees to indemnify NZTG against any liability or cost incurred by NZTG under the CGA as a result of any breach by the Customer of its obligations under that Act to any person.

Nothing in these terms is intended to have the effect of contracting out of the provisions of the CGA except to the extent permitted by that Act, and these terms are to be modified to the extent necessary to give effect to that intention.

Where NZTG undertakes installation or assembly, the Customer shall be responsible for all loss, damage or destruction of equipment or data occasioned by fire, earthquake, water, effect of weather, pilfering and any other causes whatsoever, whether the goods be wholly or partially installed and despite anything contained in these Conditions with regard to terms of payment.

Where software is provided by NZTG to the Customer, once the application has been installed and it is running to the Customer's satisfaction, NZTG will no longer be responsible for the day to day operation of the software unless a further Agreement is in place. Should further support be required, further charges may be applicable.

Where NZTG are providing services that require location of NZTG equipment at the Customer's premises, the Customer agrees to give NZTG representatives safe access to the premises so that they can install, inspect, maintain, replace or remove the NZTG equipment. If the Customer is in rented premises they will obtain the written permission of the owner that NZTG are authorised to access, and locate our equipment at the Customer's premises.

NZTG will not be responsible for any non-delivery by any of its suppliers for services. The Customer agrees to indemnify NZTG against any loss or expenses incurred (including costs on a solicitor client basis) caused by the loss and/or poor performance of services provided by any of its suppliers.

NZTG will not be responsible for any loss as a result of lost or corrupted data. The Customer agrees to indemnify NZTG against any loss or expenses incurred (including costs on a solicitor client basis) as a result of lost or corrupted data.

Notwithstanding any other Clause contained in these Conditions, the Customer agrees to indemnify NZTG against all loss, cost, damage or expense resulting from any claim made against NZTG by a third party as a direct result of the Customer's use of the services, including material that is generated or disseminated by the Customer through using the services.

11. CUSTOMER'S EQUIPMENT

The Customer will ensure that all of its equipment used by NZTG in the supply of NZTG's Services is installed in accordance with NZTG's specifications.

The Customer will agree to follow NZTG's instructions about any modifications that may be necessary to make the Customer's equipment more compatible with NZTG's Services.

Notwithstanding anything else in these Conditions, if the Customer's equipment causes a fault in the operation of a service provided by NZTG, the Customer will pay the reasonable costs of restoring that service.

12. CUSTOMER'S LIABILITY & DEFAULT

If the Customer shall:

- Fail to make any payment due under the Contract or commit any other breach of any of the Customer's obligations under the Contract; or
- Suffer execution under any judgment; or
- Commit an act of bankruptcy; or
- Make any composition or arrangement with any creditor; or
- Being a company, pass a resolution for winding up or have a receiver appointed over any of its property or have a winding up petition presented against it; or
- Behave toward NZTG staff in a manner deemed unacceptable by NZTG management, including but not limited to sexual or racial discrimination, NZTG (in addition to any other remedies hereby or by statute conferred) may treat the Contract as terminated and any part of the purchase price then unpaid, together with any other monies owing hereunder, whether or not due under the terms of the Contract shall forthwith become due and payable. Any such termination shall be without prejudice to any claim or right NZTG may otherwise possess.

13. FORCE MAJEURE

NZTG shall not be liable for any delay or failure in the performance of any obligation or the exercise of any right under the Contract or for any loss or damage (including indirect or consequential loss or damage) if such performance or exercise is prevented by or hindered in whole or in part by reason of an event out of NZTG's control or by reason of acts of God such as fire, explosions, earthquakes, volcanic eruptions, storms, wars, public disorders, quarantine restrictions, embargoes, strikes or by reason of any other cause beyond its control.

14. WAIVER

If NZTG exercises or fails to exercise any right or remedy available to it, this shall not prejudice NZTG's rights in exercising that or any other right or remedy unless expressly stated in writing and signed by an authorised representative of NZTG. No delay or failure to act is a waiver.

No waiver is effective unless it is in writing. A waiver of any breach is not a waiver of any other breach.

15. VARIATIONS TO TERMS AND CONDITIONS OF TRADE

NZTG may from time to time and in its sole discretion amend, add to or delete any of the terms of these Conditions with immediate effect by giving notice to the Customer PROVIDED THAT NZTG shall not make any variation to the nature or extent of the Security Interest granted by the Customer in Clause 9 without the written agreement of the Customer. NZTG may notify the Customer by delivering to the Customer an invoice with a notice of amendment and receipt of the invoice by the Customer will be deemed to be acceptance by the Customer of the amended Conditions.

16. GOVERNING LAW

These terms of trade are governed by the laws of New Zealand, NZTG and the Customer shall submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of these terms and conditions of trade, if for any reason one or more of the provisions of these Conditions is unenforceable, it shall be severed and all the provisions shall remain binding.