

Computer NetworX Limited

Terms of Trade for Goods and Services

Goods and labour services ("Goods" and "Services") supplied by Computer NetworX Limited ("the Company") are supplied to the person, partnership or company ("the Customer") for sale on the following terms and conditions:

1. Terms of Trade

- 1.1** These Terms of Trade will apply to the provision of all Goods and Services by the Company to the Customer and will prevail and take precedence over any written document or oral message from the Customer to the contrary.
- 1.2** These Terms of Trade, the Quotation, any order, any variations agreed by the parties in writing and any credit account application will constitute the sole agreement ("Agreement") between the Company and the Customer.

1.3 Definition of Goods and Services:

Goods: Goods includes all hardware and software and related accessories provided and sold by the Company and all intellectual property associated with those Goods and any prototypes or samples supplied by the Company to the Customer.

Services: Services includes labour for the manufacture, repair or service of equipment owned by the Customer and such other contracting services as may be supplied by the Company to the Customer.

2. Quotations and Price

- 2.1** Where so requested by the Customer, the Company will submit a quotation (net of GST) for Goods and Services ("Quotation"). The Customer will accept the terms of the Quotation (and thereby make an order) either by counter-signing the Quotation or by submitting a separate order to the Company. Quotations are valid for 14 days unless the Company withdraws the Quotation before that date or before the Customer counter-signs it or submits a separate order.
- 2.2** If the Customer cancels an order without the consent of the Company the Customer will be liable to pay the Company all costs and expenses incurred by the Company in fulfilling the order to the date of cancellation.
- 2.3** The Quotation price may be increased if:
- (a) the Company suffers any cost increases which are beyond its control in the supply, production and delivery of any Goods and/or Services (including increases in materials costs and currency changes) between the date of the Quotation and the date of delivery provided the Company can supply written evidence of such cost increase; and/or
 - (b) the Customer varies its requirements for the Goods or Services. Variations may result if the Customer changes its instructions or requires additional drawings, samples, materials or tooling changes.

3 Delivery of Goods and Services

- 3.1** Delivery of the Goods to the Customer will constitute delivery. Delivery of Services will be made upon completion of labour. The Company will make every effort to ensure that Goods and Services are delivered within the timeframe required by the Customer, but will not be responsible for any loss or damage incurred by the Customer arising from delays in delivery.
- 3.2** Where any delay to the delivery of Goods or Services is caused by any act, omission or delay by the Customer (including where the Customer has not rendered its site safe under any Health and Safety Regulations), the Customer will pay the sum that would have been payable had delivery been made on time plus any stand-by costs incurred by the Company.

4 Payment Terms

- 4.1** Unless otherwise stated in the Quotation all Goods and Services must be paid in full on or prior to delivery unless the Customer has applied and, at the Company's discretion, been accepted for credit in which case payment will be made by the 20th of the month following receipt of the invoice by the Customer.
- 4.2** If payment is not made in full by the due date, the Company may charge the Customer interest on the unpaid overdue balance at the rate of 2% per annum above the current rate charged by the Company's bank calculated from the due date of payment to the actual date of payment.

5 Cancellation

- 5.1** In the event that the Customer cancels the Goods or Services prior to completion the Customer is liable for any costs incurred including for any Goods that have been delivered and/or ordered and for all professional services provided up until and including the date of cancellation.

6 Risk and Ownership of Title

- 6.1** Risk in the Goods will pass to the Customer upon delivery but ownership of them will remain with the Company until all money owed by the Customer to the Company has been paid in full.
- 6.2** The Customer will insure the Goods from delivery and in the event that any damage is caused to the Goods before the Company has received payment in full for those Goods, the Customer agrees to remit the proceeds of any insurance claim to the Company to reduce the amount owing on the Goods.
- 6.3** Until the Company receives payment in full:
- (a) The Customer will hold or deal with the Goods for and on behalf of the Company as fiduciary agent and bailee of the Company; and
 - (b) If the Goods have become mixed with or attached to other materials or property so that the Goods lose their separate identity or it is impractical to remove the Goods, the Company will retain title in the proportion of the materials or property that is equal in value to the money owed by the Customer to the Company.

6. Personal Property Securities Act 1999 ("PPSA") (Capitalised expressions have the meaning prescribed to them in the PPSA)

- 6.1** The Customer acknowledges the Company's Security Interest in all Goods ("Collateral") delivered to the Customer but not paid for under these Terms of Trade.
- 6.2** The Company reserves the right to register a Financing Statement in respect of each category of Goods supplied to the Customer which comprises Collateral. The Company's costs of registering a Financing Statement or a Financing Change Statement will be paid by the Customer and where applicable, debited by the Company against the Customer's account with the Company. At the request of the Company the Customer will promptly execute any documents and do anything else required by the Company to ensure that the Company's Security Interest in the Collateral created by these Terms of Trade constitutes a Perfected Security Interest over the Goods comprising Collateral.

- 6.3** The Customer will not agree to allow any person to file a Financing Statement over the Collateral without the prior consent of the Company and will notify the Company immediately if it becomes aware of any person taking steps to file a Financing Statement against any of the Collateral.
- 6.4** The Customer:
- a. Agree(s) that nothing in s114(1)(a), 133, and 134 of the PPSA will apply to the Agreement; and
 - b. Waive(s) the Customer's right to do any of the following:
 - (i) object to the Company's proposal to retain any Personal Property under s121 of the PPSA;
 - (ii) not have goods damaged when the Company removes an Accession under s125 of the PPSA;
 - (iii) receive notice of the removal of an Accession under s129 of the PPSA;
 - (iv) apply to the Court for an order concerning the removal of an Accession under s131 of the PPSA;
 - (v) redeem any Personal Property under s132 of the PPSA;
 - (vi) to receive a copy of the Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to the Security Interest created by the Agreement.

7. Use of Intellectual Property

- 7.1 Where the Company has proprietary rights in any patent, copyright, designs, brand name, designmark, servicemark, trademark and other data pertaining to Goods supplied to the Customer it will retain all such rights. The Company grants the Customer the right to use the Goods for the purpose for which they were intended but for no other purpose.
- 7.2 The Customer agrees not to give or make any undertaking, assertion or representation in relation to the Goods to any other person without the prior approval in writing of the Company, and the Customer will indemnify the Company against liability or cost incurred by the Company as a result of any breach by the Customer of this provision.
- 7.3 Where the Company has followed plans, drawings, designs, specifications and instructions (whether oral or written) provided by the Customer, the Customer will indemnify the Company against any damages, costs or expenses incurred by the Company as a result of following such plans, drawings, designs, specifications and instructions and including those arising from the infringement of any third party's intellectual property rights by the Customer.

8. Warranty

- 8.1 The Company warrants that its Services, for a period of 3 months, will conform to the product properties and general specifications set out in the corresponding Quotation. Subject to clause 8.2 below and provided that the Customer notifies the Company in writing of any defect within 30 days of that defect occurring then the Company will repair, or at its option, re-provide Services that do not conform with such product properties and general specifications.
- 8.2 The Company will not accept any claim by the Customer and this warranty will not apply where:
- (a) the defect or failure is due to or results from damage or misuse, negligent maintenance or care while in the possession of the Customer or failure to follow care instructions;
 - (b) the defect or failure is due to defective drawings or instructions supplied by the Customer;
 - (c) the Customer breaches its licence to use the Company's software or infers a right or license to use or exploit any intellectual property in which the Company is proprietor; and/or
 - (d) the Customer or its agent elects to remedy faults or defects and causes damage.
- 8.3 Where the manufacturer or supplier of any Goods or components, as installed by the Company, provides any warranty, then the Company (to the extent that it is able to do so) will make such warranty available to the Customer. Any additional work the Customer requires following a replacement Good (from the manufacturer) such as restoring data, applications, operating systems or reconnection will be dealt with as follows:
- (a) if the fault occurs within 3 months of the installation as a gesture of goodwill the Company will meet the costs of repair or at its option replace goods, and will endeavour to restore the Customer to the position they would have been in but for the fault, by repairing or re-providing the Services; or
 - (b) if the fault occurs outside of the initial 3 month term any costs associated are to be met by the Customer and the Customer will be invoiced accordingly at the usual hourly rate.
- 8.4 The Company will provide the Services in a proper and businesslike manner.
- 8.5 For the avoidance of doubt the costs associated with fault diagnosis and fault escalation to the manufacturer are to be met by the Customer unless the fault occurs within 3 months of installation.

9. Force Majeure

- 9.1 The Company will not be liable to the Customer for damages directly or indirectly arising from any delay or failure in delivery of the Goods and/or Services or failure to perform any of the Terms of Trade where such delay or failure is caused directly or indirectly by an act of God, weather conditions, electrical failure, fire, armed conflict, labour dispute, civil commotion, Government intervention, or inability to obtain labour or materials, accidents, transportation delays or any other cause beyond the Company's reasonable control. Nor will the occurrence of such an event give the Customer a right of cancellation.

10. Liability of Company

- 10.1 Except as expressly provided to the contrary in the Agreement all warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise relating in any way to the Goods and Services are excluded.
- 10.2 In no event will the Company be liable for special, indirect or consequential damages or for any loss of business, profit or data, however caused, which may be suffered or incurred or which may arise directly or indirectly in respect of the Goods and/or Services or the failure or omission on the part of the Company to comply with its obligations under the Agreement, even if the Company had been advised of the possibility of such damages or loss.
- 10.3 The Company's total liability for damages under the Agreement whether in contract, tort or under any other legal theory will be limited at the option of the Company to any one or more of the following:
- (a) if the breach relates to Goods:
 - (i) the replacement of the Goods or the supply of equivalent goods;
 - (ii) the repair of such Goods;
 - (iii) the payment of the cost of replacing the Goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the Goods repaired; and
 - (b) if the breach relates to Services:
 - (i) the supplying of the Services again; or
 - (ii) the payment of the cost of having the Services supplied again.

- 10.4 The Customer warrants that it has not relied on any representation made by the Company which has not been stated expressly in the Agreement or upon any descriptions or illustrations or specifications contained in any document including any catalogues or publicity material produced by the Company.
- 10.5 The Customer agrees that where the Quotation sets out any testing or acceptance procedure for the quality of Goods or Services and that testing or acceptance procedure has been successfully completed by the Company, then notwithstanding any other provision of the Agreement, the Customer agrees that it will have no further claim whatsoever against the Company in relation to the supply of the relevant Goods or Services.

11. Complaints

- 11.1 The Company will use its best endeavours to rectify and deal with any issues that arise in relation to its Services that are brought to its attention within 30 days of the date of invoice. The Company is under no obligation to consider those issues raised with it after the 30 day period.
- 11.2 Notwithstanding clause 11.1 the Customers has an obligation to pay for the Goods and Services in accordance with this Agreement.

12. Default

- 12.1 In the event that the Customer fails to make any payment when due or becomes insolvent, commits an act of bankruptcy, is adjudicated bankrupt or makes any composition or arrangement with creditors or being a Company goes into liquidation whether compulsory or voluntary other than for the purpose of and followed by amalgamation or reconstruction, or has a receiver appointed of any part of its business or assets then the Company reserves the right:
- (a) to treat all sums due or to become due from the Customer as immediately due and payable;
 - (b) to cancel or suspend delivery of Goods and the provision of Services;
 - (c) to enter onto the Customer's premises (without the necessity of giving notice) where the Goods may be installed or stored and to search for and remove and take possession of all Goods which the Company has title to without being in any way liable to the Customer or anyone claiming under it for so doing;
 - (d) to withhold the further supply of Goods and Services on credit.
- 12.2 In the event of default under the Agreement the Customer will at the Company's request:
- (a) re-deliver the goods to the Company or do anything reasonably necessary to allow the Company to retake possession of them;
 - (b) instruct any third parties who owe money in respect of Goods to pay that money direct to the Company;
 - (c) make any records available which may assist the Company to take the proceeds of the Goods.
- 12.3 The Customer will be liable for and indemnifies the Company for all expenses (including solicitor – own client legal costs) and losses incurred or suffered by the Company as a result of any default by the Customer under these Terms of Trade.
- 12.4 Cancellation of the Agreement with the Company will not relieve the Customer from liability arising from any antecedent breach of the Agreement.
- 12.5 Upon the termination of the Agreement for any reason, all rights of the Customer granted under the Agreement will terminate and the Customer will not be entitled to receive any rebate or refund of the whole or any part of the money paid pursuant to the Agreement.

13. Applicable Law for Dispute and Arbitration

- 13.1 In the execution and interpretation of the Agreement the law of New Zealand will apply and in the case of dispute between the Company and the Customer, such dispute will be heard in New Zealand and be referred to a mediator.

14. Information and Privacy Act

- 14.1 For the purposes of facilitating the administration of the Company's business, The Customer authorises the Company:
- (a) to collect all information it may require about the Customer from any third parties and authorises those third parties to release that information to the Company;
 - (b) to hold all information given by the Customer or any third party to the Company;
 - (c) to use that information including giving the information to any other person to facilitate collection of debts from the Customer.
- 14.2 The information will be collected, held and used on the condition that:
- (a) it will be held securely at the Company's office referred to in the Quotation;
 - (b) it will be accessible to any of the Company's employees and agents who need access to it for the administration of the Company's business;
 - (c) the Customer may request access to and correction of it at any time.

15. New Zealand Consumer Guarantees Act 1993 ("CGA")

- 15.1 Where the Company is supplying Goods and Services to the Customer for business purposes within the meaning of the CGA pursuant to section 43 of the CGA, the provisions of the CGA will not apply to these Terms of Trade.
- 15.2 Where the Customer supplies the Goods on to a person acquiring them for business purposes it will be a term of the Customer's agreement with the Customer of the goods that the CGA will not apply in respect of the Goods.

16. General

- 16.1 The Company may assign any of its rights and obligations under the Agreement to any person. The Customer may not assign any of its rights and obligations to any person without the prior written consent of the Company.
- 16.2 The Agreement may be signed by facsimile.
- 16.3 Failure by the Company to enforce any of these Terms of Trade will not be deemed to be a waiver of the Company's rights to enforce these terms which will remain in full force.

SIGNATURES

SIGNED by)
COMPUTER NETWORKX LIMITED) _____
in the presence of:) Director Authorised Signatory

Witness signature

Witness name

Witness Occupation

Witness Town of Residence

SIGNED by)
in the presence of:) _____
Director Authorised Signatory

Witness signature

Witness name

Witness Occupation

Witness Town of Residence