

TERMS OF TRADE

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PART A: OVERVIEW OF THESE TERMS

These Terms of Trade apply to all Products and Services that we supply to you.

At Ohnyx IT Solutions Limited ensuring our Terms are transparent and easy to understand is important to us. If you have any questions or are unsure about anything, please contact us.

To make these Terms easy to use, we:

- (a) have set out a 'Dictionary' in Part H, which explains the specific meaning, for the purposes of these Terms, of the capitalised words used in these Terms; and
- (b) have included **summaries / outlines** for each Part in blue boxes – these are intended for guidance only and do not replace any of the terms in these Terms.

1. Introduction

- 1.1 These Terms set out all of the terms and conditions that apply to Products and Services that we supply to you.
- 1.2 Any other terms and conditions will not apply unless expressly approved in writing by us for a particular Order.
- 1.3 We may update these Terms on notice to you in writing. Our updated Terms will apply to all Products and Services you order after we have notified you that we have updated our Terms.

PART B: PRODUCTS AND SERVICES

Part B sets out details about placing Orders. It also sets out the process that applies if there are any issues with an Order or if an Order is cancelled.

2. Order process

- 2.1 You may order Products and Services from us in accordance with our order processes that we advise to you at any time.
- 2.2 All Orders are subject to acceptance by us. We may accept an Order (in whole or in part) by issuing an invoice for the applicable Products and Services, delivering the Products and Services or otherwise confirming the order in writing.
- 2.3 We are under no obligation to enquire as to the authority of any person placing an Order on our behalf.
- 2.4 You may request Variations to Orders. However, acceptance is at our discretion and is subject to our approval in writing, and in accordance with clause 7.

3. Delivery of Products and Supply of Services

- 3.1 We will use reasonable efforts to deliver Products and provide Services on the Delivery Date specified in the relevant Order. However, unless expressly agreed otherwise, the Delivery Date is indicative only.
- 3.2 We will deliver the Products and provide the Services at the delivery location set out in the relevant Order or any other location agreed with you in writing.
- 3.3 Subject to clause 16, if the delivery location is at your premises, you must provide our Representatives with suitable access to your premises during normal business hours, together with any assistance reasonably required by our Representatives to deliver the Products and perform the Services.

4. Supply of Products

- 4.1 Clauses 4 and 5 applies if your Order relates to Products.
- 4.2 We may deliver Orders in instalments (unless agreed otherwise).
- 4.3 If you delay, fail or refuse to accept delivery of Products, the Products will be treated as delivered when we were willing and able to deliver the Products. Without affecting any other rights we may have, we may charge you for any reasonable expenses or additional costs incurred by us as a result of the delay, failure or refusal to accept delivery (including storage).
- 4.4 Risk in the Products passes to you on delivery.
- 4.5 You are responsible for ensuring that any instructions, recommended uses, applications and installation methods are followed for Products and any cautions and/or warnings are observed.

5. Defects

- 5.1 You must inspect the Products on the date of delivery and notify us of any alleged defect or damage or incorrect products or quantity (**Defects**). Upon request, you must allow us to inspect, or return to us, any defective or damaged Products. You should notify us of any alleged Defects as soon as possible to enable us to confirm that any Defects occurred before delivery to you.
- 5.2 If there are any Defects in an Order, the remedies set out in clause 25.1 will apply.

6. Cancellation

- 6.1 Either party may cancel an Order by written notice if the other party:
 - (a) commits a material breach of these Terms which is not remedied within 20 Business Days of written notice of the breach from the other party; or
 - (b) suffers an Insolvency Event.
- 6.2 If we are unable to deliver any Products or Services to you, due to reasons beyond our reasonable control, we may cancel the Order (in whole or in respect of any instalment) by giving written notice to you. We will repay you any amount you have paid to us in advance for the relevant Products and/or Services. We will not be liable for any loss or damage arising from such cancellation.
- 6.3 We will not accept cancellation of any Order or any Order for Products made to your specifications, or for non-stocklist items, after the Order has been accepted by us.

7. Variations

- 7.1 We may require variations to an Order if we identify factors that affect delivery of the Products and Services to you, before or during our provision of the Products and Services. Any such variations will be submitted to you for approval (**Variation Notice**). You must respond to a Variation Notice as soon as possible (and within 7 Business Days). We may suspend or delay provision of the Products and Services pending your approval.
- 7.2 If you do not respond to a Variation Notice within 7 Business Days, we may assume that you have accepted the applicable variations.
- 7.3 If you notify us, within 7 Business Days of a Variation Notice, that you do not accept the variations, we will cancel the Order (or, if applicable, the remaining Products and Services to be provided under the Order) on notice to you. We will repay you any amount you have paid to us in advance for the Products and Services that we do not provide as a result of such cancellation (less any unrecoverable costs that we have incurred).

PART C: PRICE

Part C sets out terms relating to the Price for the Products and Services.

8. Price

- 8.1 The Price for Products and Services will be:
 - (a) calculated based on our standard hourly rate as at the date of the Services that are provided;
 - (b) the Price that we have quoted for the Products and Services (subject to clause 8.5).
- 8.2 We may update our standard hourly rates at any time on notice to you in advance. Any such updates will only apply to Orders placed after the effective date of the update.
- 8.3 Unless otherwise stated, the Price does not include GST.
- 8.4 We may charge you for freight, insurance, installation, disbursements and any applicable taxes, duties and levies, in addition to the Price.
- 8.5 Where we provide a quotation, proposal or estimate:
 - (a) unless otherwise specified, the quotation, proposal or estimate is valid for 7 days from the date of issue and may be subject to such further conditions as are expressly set out in the quote, estimate or pricing;
 - (b) we may withdraw the quotation, proposal or estimate at any time before you accept it or we accept an Order by notice in writing to you; and
 - (c) the quotation, proposal or estimate will be exclusive of any applicable additional amounts referred to in clause 8.4.

PART D: PAYMENT TERMS

Under these Terms, we may supply Products and Services to you on credit. It is very important to us that you pay us in full by the due date for payment. The following clauses provide additional protections for us to reflect that arrangement, including terms that will apply if there are any delays or disputes relating to payments.

9. Payment

- 9.1 You must pay us all Amounts Owing to our bank account (notified to you and updated at any time) or any other payment method that we agree with you.
- 9.2 Payment shall be:
 - (a) on completion of the Services; or
 - (b) by way of instalments/progress payments in accordance with the Order; or
 - (c) as indicated on our invoice; or
 - (d) 20th of the month following; or
 - (e) no later than 7 days from the date of the invoice (unless otherwise stated on the invoice); and
 - (f) in full without deduction, withholding, set-off or counterclaim.
- 9.3 If you have any dispute relating to an invoice issued by us, you:
 - (a) must notify us of that dispute in writing within 7 days from the date of invoice (after that period, unless there is a manifest error, you will be deemed to have accepted the invoice); and
 - (b) will only withhold payment of the amount in dispute and will, upon resolution of any dispute, immediately pay the balance (if any) due to us.
- 9.4 We and you each agree to promptly deal with any disputed invoices and, where possible, to resolve disputes before the due date for payment.
- 10. **Credit terms and repayment obligations**
- 10.1 The supply of Products and Services to you on credit is subject to our prior approval. We may use the services of credit reporters and debt collection agencies (in accordance with clause 17.2).
- 10.2 You must notify us immediately:
 - (a) if you suffer an Insolvency Event. Any Amount Owing will, whether or not due for payment, immediately become due and payable if an Insolvency Event occurs; or
 - (b) if you are a company and there is a material change in your effective management or ownership.
- 11. **Deposit and guarantee**
- 11.1 We may require that you pay us in advance, or pay a deposit, or provide a guarantee or other security, before we supply Products or Services, as security for any Amount Owing.

- 11.2 If we cancel an Order (for any reason other than your breach of these Terms), we will refund any deposit that you have paid to us in full. Otherwise, any deposit that you pay to us is non-refundable, unless we expressly agree otherwise in writing.
- 12. Rights to recover Products**
- 12.1 We retain ownership of all Products that we supply to you until we have received payment in full of the Amount Owed.
- 12.2 You may resell or use any Products in the ordinary course of your business before ownership of the Products has passed to you. However, you will be deemed to hold the proceeds of sale or use (in whatever form) on trust for us to the extent of the Amount Owed.
- 12.3 If any Amount Owed is overdue or if an Insolvency Event occurs, you must return Products to us on request, or permit us to enter any premises where Products may be stored to repossess those Products.
- 13. Late payments**
- 13.1 If payment in full of any Amount Owed (which is not subject to a genuine dispute) is not made to us on the due date, we may:
- (a) suspend, or cancel (in accordance with clause 6.1(a)), the provision of any or all Products and Services to you;
 - (b) cancel any rebates or discounts (whether or not previously credited); and
 - (c) charge you interest at a rate of 2.5% per month on the balance of the outstanding amount from the due date of payment until the date the outstanding amount is paid, accruing daily and charged monthly.
- 14. Costs of recovering Amounts Owed**
- 14.1 You must reimburse us for any reasonable costs and expenses we incur to recover any Amount Owed, or exercise our rights to recover Products, including any debt collection fees or commission and full legal expenses.
- 15. Security interests**
- 15.1 You acknowledge that these Terms create, in our favour, a security interest (as defined in the PPSA) in all Products and the proceeds of any Products (in accordance with clause 12.1) (**Security Interest**), to secure the payment by you to us of the Amount Owed.
- 15.2 You undertake to promptly sign any further documents which we may reasonably require to enable us to perfect and maintain the perfection of the Security Interest (including by registration of a financing statement) and to provide not less than 14 days' prior written notice of any proposed change in your name and/or any other change in details (including changes in address, trading name or business practice).
- 15.3 The parties agree to contract out of sections 114(1)(a), 133 and 134 of the PPSA. You agree to waive your rights under the PPSA to the extent permitted by section 107(2) of the PPSA and to receive a verification statement relating to the Security Interest. Where we have rights in addition to Part 9 of the PPSA, those rights will continue to apply.
- 15.4 We reserve the right to require a guarantee, or any other additional security (at your cost), as security for payment, before we provide Products or Services to you.

PART E: COMPLIANCE AND INFORMATION

Part E sets out the provisions relating to health and safety, privacy, confidentiality and intellectual property rights. Unless we agree otherwise, we own all intellectual property rights in the Products and Services.

- 16. Health and safety**
- 16.1 Each party will comply with the Health and Safety at Work Act 2015 (**HSW Act**), including all applicable regulations under the HSW Act, as well as all applicable standards and codes of practice relating to health and safety. In addition, each party will comply with the other party's pre-notified and reasonable health and safety policies when on the party's premises.
- 16.2 You must notify us of any known hazards arising from your premises to which any of our Representatives may be exposed while on the premises and ensure that your workplace is without risks to the health and safety of any person.
- 16.3 Each party must consult, co-operate with and co-ordinate activities with all other persons who have a health and safety duty in relation to the same matter in providing the Products and/or Services (including in connection with the delivery of the Products and/or Services).
- 17. Privacy**
- 17.1 We may collect, use and share Personal Information:
- (a) for the purposes of the performance of our obligations or exercise of our rights under these Terms; and
 - (b) in accordance with the Privacy Act 2020.
- This may include sharing Personal Information with our Related Companies.
- 17.2 We may use the services of credit reporters and debt collection agencies. We may provide your Personal Information to those agencies in order to use their services. Information disclosed to credit reporters (including default information) will be held by them and used to provide credit reporting services.
- 17.3 If you provide us with any information about a third party (including a Representative), or authorise us to collect that information, you confirm that you are authorised by the individual concerned to provide their Personal Information to us or authorise the collection of information about them in accordance with this clause 17. You also confirm that you have informed the individual of their rights to access and request correction of Personal Information.
- 17.4 You (if you are an individual) and your Representatives have the right to access, and request correction of, any of your Personal Information held by us.
- 18. Confidentiality**
- 18.1 Each party must keep confidential all Confidential Information.
- 18.2 Nothing in clause 18.1 prevents a party from disclosing Confidential Information if disclosure is:
- (a) required by law or a Regulator (but only to the extent required or, if applicable, requested by a Regulator);
 - (b) reasonably required to enable a party to perform its obligations or exercise its rights under these Terms; or
 - (c) to a Related Company or Representatives on a 'need to know' basis, provided that person is under a duty to keep the Confidential Information confidential in accordance with these Terms.
- 18.3 We may refer to you as a customer (including by using your logo) and publish any testimonials or references that you provide to us, on our website and associated marketing materials. We will ensure that any such references or testimonials accurately represent your experience with our Products and Services. Please contact us if you do not approve us referring to you in accordance with this clause or have any comments on published content.
- 19. Insights and Intellectual property**
- 19.1 We may also use any information that we collect in connection with the Products and Services to improve our Products and Services, for statistical and research purposes, and for general information purposes including to provide industry and market insights (together, **Insights**), provided that:
- (a) we must ensure that our obligations of confidentiality and privacy are paramount – for example, we will ensure that any information that we disclose or publish in accordance with this clause 19.1 is in a fully aggregated and de-identified form (so that it does not identify you or any individuals); and

- (b) we will not use information that we collect in connection with the provision of Products and Services to you, in accordance with this clause 19.1, if you have informed us that you do not authorise us to do so.
- 19.2 To the extent required by law, you grant us a non-exclusive, perpetual, irrevocable, royalty-free licence to use and sub-licence information we collect in connection with the provision of Products and Services to you, in accordance with clause 19.1. However, for clarity, we own the intellectual property rights in all Insights.
- 19.3 We (or our licensors) own all rights, title and interest in the intellectual property rights in the Products and Services at all times.
- 19.4 Any new intellectual property which is created by us or on our behalf, including as a result of, or in connection with, the provision of our Products and Services, will be owned by us, unless otherwise agreed in writing.
- 19.5 You assign all intellectual property rights to us with effect from creation, to the extent required to give effect to clause 19.3 and 19.4, and agree to do all things reasonably required by us to give effect to such assignment.
- 19.6 You warrant that the use by us of any designs, instructions or specifications supplied to us by you will not infringe the intellectual property rights of any other person and indemnify us against any losses, damages, liabilities or costs (including full legal costs) that we may suffer or incur in the event of any such infringement.

PART F: DISPUTE RESOLUTION AND LIABILITY

If a dispute arises under these Terms, we must follow the process in this part F to resolve the matter. If a claim arises under these Terms, any amount payable by you or us will be limited by the liability framework set out in this Part F.

- 20. Dispute Resolution**
- 20.1 If a dispute arises out of or in connection with these Terms, either party may give a notice to the other setting out the details of the dispute (**Dispute Notice**).
- 20.2 Following receipt of a Dispute Notice:
- (a) a Representative of each of us (with authority to settle the dispute) will meet, within 10 Business Days, to try to resolve the dispute;
 - (b) if the dispute is not resolved within 10 Business Days of our Representatives meeting (or if the meeting does not take place, for any reason, within 10 Business Days of the date of a Dispute Notice), the dispute will be referred to the senior manager of each party (if applicable), who will try to resolve the dispute within a further 10 Business Days; and
 - (c) if the dispute is not resolved by our respective Representatives in accordance with clause 20.2(b), then either party may commence court proceedings.
- 20.3 This clause 20 does not restrict either party from applying to a court for interim measures or any other form of urgent relief at any time. However, neither party may commence any other form of court proceeding without first following the procedure set out in this clause 20.
- 20.4 Each party must continue to perform its obligations in these Terms, despite the existence of a dispute, subject to the termination rights set out in these Terms.
- 21. Consumer Guarantees Act**
- 21.1 If you are acquiring, or hold yourself out as acquiring, any Products or Services in trade, to the extent permitted by law, you agree that the parties are contracting out of the CGA (to the extent that the CGA would otherwise apply) and that the CGA does not apply to any matters covered by these Terms.
- 21.2 If you are acquiring any Products for the purpose of resupply in trade, you undertake that you will:
- (a) contract out of the CGA to the maximum extent permitted by law in your contracts with your own customers; and
 - (b) procure that your customers, and each other person in the distribution chain thereafter, contract out of the CGA to the maximum extent permitted by law in their contracts with customers.
- You will indemnify us against any liability or cost incurred by us as a result of your breach of this clause 21.2.
- 22. Warranties**
- 22.1 We warrant that all Products and Services are free from material defects in materials and workmanship. However, this warranty will not cover any defect or damage to the extent that it is caused by:
- (a) any fault or defect in our Products or Services resulting from any of your (or your Representatives) acts or omissions (outside of the ordinary use of the Products or Services); or
 - (b) minor deviations in specification, measurements, colour, weight, size or strength of the Products.
- 22.2 You acknowledge that, except for the warranty set out in clause 22.1 and any written materials that we provide to you:
- (a) we do not provide any other express warranties relating to the Products and Services; and
 - (b) we expressly exclude any other Product and and/or Service warranties, including any warranties relating to the suitability for resale, quality or fitness for any particular purpose, of our Products or Services. However, this clause 22.2 is subject to any rights that you may have under the CGA (in accordance with clause 21).
- 23. Second-hand goods**
- 23.1 Where you agree that we may use any second-hand goods when carrying out and completing the Services, we will use reasonable endeavours to visually inspect such goods for obvious defects before using them.
- 23.2 Subject to us complying with clause 23.1, you agree that:
- (a) any second-hand goods used in the Services may contain defects, which will not be treated as a defect under these Terms;
 - (b) we do not give any warranty as to the quality or suitability of such goods for use in the Services; and
 - (c) any implied warranty (statutory or otherwise) in relation to such goods, is (to the extent permitted by law) expressly excluded.
- 24. Third party suppliers**
- 24.1 If you request and authorise us to arrange the provision of Products or Services directly to you by a third party supplier (whether or not such arrangement involves us contracting as your agent), to the extent applicable, these Terms will apply to our Services in arranging such supply, provided that to the extent permitted by law we exclude all liability in connection with the supply of Products and Services to you directly by a third party supplier. You agree to pay any commission or other payments due to us in accordance with these Terms.
- 25. Limitation of liability**
- 25.1 To the extent permitted by law, subject to clause 25.3, our total liability under or in connection with these Terms and the Products and Services is limited to, at our option:
- (a) in the case of Products, any one or more of the following:
 - (i) the replacement of the Products or the supply of equivalent products;
 - (ii) the repair of the Products;
 - (iii) the payment of the cost of replacing the Products or of acquiring equivalent products; or
 - (iv) the payment of the cost of having the Products repaired; or
 - (b) in the case of Services:

- (i) supplying the Services again; or
(ii) the payment of the cost of having the Services supplied again.
- 25.2 Subject to clause 25.3, if we have any liability under or in connection with these Terms, to the maximum extent permitted by law:
- (a) our total aggregate liability to you for any loss, damage or liability arising out of or in connection with these Terms will be limited to the Price paid by you to us for the applicable Products and/or Services; and
- (b) we will not be liable for any:
- (i) indirect, special or consequential loss or damage whatsoever; or
(ii) loss of profits, revenue, data, goodwill, customers or opportunity or loss of or damage to reputation.
- 25.3 Nothing in these Terms (including clauses 25.1 and 25.2) will limit or exclude our liability for:
- (a) any fraudulent act or omission;
(b) a breach of clause 18 (Confidentiality);
(c) our wilful breach of these Terms;
(d) our gross negligence; and/or
(e) any matter to the extent that liability cannot be excluded or limited by law.
- 25.4 The limitations and exclusions on liability in this clause 25 will apply irrespective of whether the legal basis for the applicable claim contract, equity or tort (including negligence) is. However, this clause 25 does not limit or exclude any rights that you may have under statute.
- 25.5 In no circumstances will we have any liability whatsoever under or in connection with these Terms:
- (a) for the acts or omissions of your Representatives or any third party;
(b) for any acts or omissions of performance in accordance with your instructions (or instructions from your Representatives); or
(c) to any third party.

PART G: GENERAL

Part G describes miscellaneous provisions necessary for the proper operation of these Terms.

26. **General**
- 26.1 **Governing Law:** These Terms are governed by and to be construed in accordance with the laws of New Zealand and each party submits to the exclusive jurisdiction of the courts of Masterton, New Zealand.
- 26.2 **Previous Agreements:** These Terms supersede and replace any previous written agreements between the parties relating to the Products and Services.
- 26.3 **Sub-contracting:** We may subcontract the performance of our obligations (including to a Related Company), on the basis we remain solely liable to you for the performance of our obligations.
- 26.4 **Assignment:** You must not assign, novate or transfer your rights or obligations under these Terms without our prior written consent (which may be withheld in our sole discretion). We may assign these Terms to any other person on notice to you (provided that we will request your prior approval (not to be unreasonably withheld or delayed) if the assignment could have any material adverse effect on you). Without limiting the foregoing, we may assign to any other person all or part of the Amount Owed by you to us.
- 26.5 **Amendments:** Any amendment to these Terms must be in writing signed by each party, except where stated otherwise in these Terms or where we are required to make changes to ensure compliance with applicable laws (in which case we notify you of the changes in writing).
- 26.6 **Force majeure:** We will not be liable to you for any failure or delay in performing our obligations under these Terms where such failure or delay is caused by events or circumstances beyond our reasonable control, including any strike, lockout, labour dispute, delay in transit, embargo, epidemic, pandemic, accident, emergency, order of government or other authority or act of God.
- 26.7 **Waiver:** A single or partial exercise or waiver of a right relating to these Terms does not prevent any other exercise of that right or the exercise of any other right.
- 26.8 **Survival:** Any provision of these Terms, which is by its nature a continuing obligation, will survive termination.
- 26.9 **Rights of Third Parties:** These Terms are not intended to confer a benefit on any person other than the parties to these Terms.
- 26.10 **Relationship:** We will provide Products and Services to you as an independent supplier. Nothing in these Terms creates a relationship of employment, trust, agency, joint venture, partnership or any other fiduciary relationship between the parties.
- 26.11 **Non-exclusive:** These Terms are not exclusive and do not impose any restriction on us providing Products and Services to, or you purchasing any product or services from, any other person.
- 26.12 **Counterparts:** These Terms may be executed in any number of counterparts (including by electronic signature or by email exchange of .pdf copies) which together will constitute the one instrument.

PART H: DICTIONARY

Part H sets out a Dictionary, to define the capitalised terms used in these Terms.

27. **Definitions**
- Amount Owed** means any amount owed by you to us, from time to time, including the Price, any applicable amounts referred to in clause 8.4, any interest payable by you, your liability under these Terms and any enforcement costs incurred by us in seeking payment of any Amounts Owed by you.
- Business Day** means Monday to Friday, excluding public holidays in New Zealand.
- Confidential Information** means all information that could be reasonably regarded in the circumstances as confidential, including information which relates to the business, interests or affairs of a party, the terms of use, the Products and Services (as applicable), and intellectual property rights, but excludes information which is:
- (a) in the public domain, other than as a result of a breach of these Terms;
(b) in the possession of a party prior to the commencement of these Terms without any obligation of confidentiality; and
(c) is independently developed or acquired by a party prior to the commencement of these Terms without relying on information which would itself be Confidential Information.
- Consumer** has the meaning given to that term in the Consumer Guarantees Act 1993.
- Delivery Date** means the date for delivery of the Products and/or Services, as specified in the Order.
- Insolvency Event** means, in relation to you, any of the following steps has occurred (or we have reasonable grounds to believe that any of these steps is likely to occur):
- (a) the primary, or all, of your business activities is suspended or ceases
(b) the presentation of an application for your liquidation;
(c) the making of any compromise, proposal or deed of arrangement with all or some of your creditors;
(d) the appointment of a liquidator, receiver, statutory manager, or similar official;
(e) your suspension or threatened suspension of the payment of your debts as

- (f) they fall due;
(g) the enforcement of any security against the whole or a substantial part of your assets;
(h) if you are an individual, anything having a similar effect to any of the events specified above happens in relation to you; or
(i) any other insolvency event or proceedings analogous to any of the foregoing occurs in any relevant jurisdiction,
- in each case, unless it takes place as part of a solvent reconstruction, amalgamation, merger or consolidation.
- Order** means an order for Products or Services that you submit to us and we approve, in accordance with clause 2.
- Personal Information** has the meaning given to that term in the Privacy Act 2020.
- PPSA** means the Personal Property Securities Act 1999.
- Price** means the Price payable, in accordance with clause 8.1.
- Products** means any Products (and associated services) supplied by us to you at any time, including the Products specified in an Order.
- Regulator** means any authority, commission, government department, court, tribunal, or similar having regulatory or supervisory authority over the parties or any of the Products and/or Services.
- Related Company** has the meaning given to it in the Companies Act 1993, read as if a reference to company was a reference to any body corporate of any jurisdiction.
- Representatives** means directors, officers, employees, agents and contractors of the relevant party.
- Services** means any services supplied by us to you at any time, including the Services specified in an Order.
- Specific Terms** means the terms (if any) that are included in Part I to these Terms.
- Terms** means these Terms of Trade (including any Specific Terms outlined in Part I), as may be amended from time to time, each Order and any additional terms expressly agreed in accordance with clause 1.2 (if applicable).
- We** or **us** means the Supplier of Products and Services, Ohnyx IT Solutions Limited.
- You** or **your** means the customer purchasing Products and Services from us.

28. Interpretation

In these Terms, unless the context otherwise requires:

- (a) headings are for convenience only and do not affect interpretation;
(b) a reference to legislation includes all regulations, orders, instruments, codes, guidelines or determinations issued under that legislation or and any modification, consolidation, amendment, re-enactment, replacement or codification of it;
(c) a reference to "in writing" includes by email and a reference to "agree" or "agreement" or "notice" or "approval" means an agreement, notice or approval (as applicable) in writing;
(d) the words "include" or "including", or similar expressions, are to be construed without limitation;
(e) a reference to a party to includes that party's successors and permitted assigns and substitutes; and
(f) a word importing the singular includes the plural and vice versa.

PART I: SPECIFIC TERMS

Part I details any specific terms that apply to your order of the Products and Services.

29. **Information we provide**
- 29.1 Where we give any advice, recommendation, information, assistance or service provided by us in relation to Products or Services (including, but not limited to, additional measures required to protect against potential security breaches or cyber-attack, etc.), supplied is given in good faith to you, or your agent and is based on our own knowledge and experience and shall be accepted without liability on the part of us, (human error is possible under these circumstances), and we shall make all effort to offer the best solution to you. Where such advice or recommendations are not acted upon then we shall require you or your agent to authorise commencement of the Services in writing. We shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
30. **Information we require**
- 30.1 You shall:
- (a) as soon as practicable make available to us all information, documents, software, hardware, and other particulars required by us for the provision of Services;
(b) obtain, keep and make available to us, machine readable copies of all programs, operating systems, drivers and data files relating to the equipment. We do not assume any liability as a consequence of your inability to use your machine readable data;
(c) provide content to us, in such form as reasonably prescribed by us from time to time, and hereby grant us a non-exclusive, worldwide, irrevocable licence to use such content for incorporation in the Services;
(d) ensure that such content supplied to us is not prohibited content, or contains any viruses, trojan horses, worms, time bombs, cancel bots or any other software program or routine designed for or capable of interfering with the operation of the Services; and
(e) ensure that we are given such information and assistance (including remote access (where required) to any systems plus usernames and passwords or any other locations) as we reasonably require to enable us to complete any necessary Services.
- 30.2 Provided we act reasonably, we are entitled to assume that any request in connection with the Services that we receive from you (or your agents, employees or contractors) or from the premises where the Services are being supplied or accessed, is authorised by you.
31. **Repair notice**
- 31.1 If you are a consumer within the meaning of the Consumer Guarantees Act 1993, this clause constitutes a repair notice given under this legislation and you acknowledge that:
- (a) the repair of equipment may result in the loss of any files stored on the hard drive, etc. ("User-Generated Data"). It is the sole responsibility of you to back-up any User-Generated Data which you believe to be important, valuable, or irreplaceable prior to submitting the equipment for repair; and
(b) equipment presented for repair may be replaced by, or repaired with, refurbished Products of the same type rather than being repaired.
- 31.2 You acknowledge and agree that we shall not be held responsible or liable for:
- (a) any loss, corruption, or deletion of files or data (including, but not limited to, software programmes) resulting from illegal hacking or Services provided by us. Whilst we will endeavour to restore files or data (at your cost), it is the sole responsibility of yours to back-up any data as per clause 31.1(a). You accept full responsibility for your software and data and we are not required to advise or remind you of appropriate backup procedures;
(b) any loss or damage to your software or hardware caused by any 'updates' provided for that software; and
(c) any unlicensed software, data loss or problems arising caused by the user or software.

- 31.3 It is the policy of ours to report all findings of illegal material (including, but not limited to, images and software) to the relevant authorities.
- 31.4 If during the provision of the Services we are required to perform a backup of any data to our server as we see fit in order to repair computers/devices, such information data will be held for a maximum of 30 days. You must inform us within 30 days (commencing from the repair date) if any data is missing so that we can attempt to restore the missing data. Whilst we will take all possible precaution to protect your data on our servers, it may be required in some circumstances to view personal data in order to test a successful data recovery or data restore procedure, we will treat such information as confidential and shall not disclose any or part thereof of said information, unless it falls under the umbrella as detailed in clause 31.3. After 30 days we will delete the data and we accept no liability for deletion of files should you fail to comply with this clause.
- 32. Subscription Services**
- 32.1 The commencement date shall be the date of the first delivery of the Services, or from the date of signing, whichever, is the earlier. Fixed price agreements shall be for the period ("initial term") as agreed between both parties and shall revert to a monthly roll over basis automatically, thereafter, unless agreed otherwise until terminated by either party by giving at least 1 months required notice as defined in the agreement prior to the expiration date of the initial term or any additional term.
- 32.2 We may adjust the monthly charges from time to time upon providing 1 month's written notice to you. Services are billed to you 1 month in advance (unless otherwise specified).
- 32.3 If you wish to terminate the subscription service during a stipulated term, we may charge you an early termination fee, the amount of which will depend on the Services acquired by you and the date of termination.
- 32.4 Upon termination of the subscription service, we will immediately delete all files and content relating to you and the Services provided thereto.
- 32.5 It is your responsibility to make arrangements for the transfer of your data prior to the termination date. We accept no liability for any loss or damage incurred by you as a result of the deletion of such data.
- 33. Access to work area**
- 33.1 You acknowledge and agree to co-operate with us in connection with the provision of the Services and shall ensure that the work area is free from hazards and all other objects (including, but not limited to, cabling or items that are likely to break) that may limit such access to your premises, equipment and adequate working space and facilities, such as electrical outlets, within a reasonable distance from the equipment. We shall not be liable for any loss or damage to any property, or injury to any person, that may be caused by your failure to comply with this clause.
- 33.2 You acknowledge and accept that during the course of the Services that existing plastics or connections may be broken to access the repair area and/or carry out general maintenance, which is beyond our control. Any additional cost associated with replacement items shall be borne by you, unless due to our negligence.
- 34. Your property and goods**
- 34.1 In the case of property and materials left with us without specific instructions, we shall be free to dispose of them at the end of 3 months after us receiving them and to accept and retain the proceeds, if any, to cover our own costs in holding and handling them.
- 34.2 Where materials or equipment are supplied by you, we accept no responsibility for imperfect work caused by defects in /or unsuitability of such materials or equipment.
- 35. Web site development**
- 35.1 You acknowledge and accept that upon acceptance of our estimate, and in accordance with these Terms, we will:
- (a) use our best endeavours to develop the web site in accordance with your instructions and specifications;
 - (b) to the extent specified in your instructions and specifications, negotiate and procure any third-party agreements on behalf of you; and
 - (c) develop the web site based upon current technology platforms (e.g. internet browsers etc.), and therefore we cannot guarantee that web site features and /or copy/content will display correctly, and that the overall visual experience will be the same, for use by either superseded or presently undeveloped technology.
- 35.2 You will, in addition to any other obligations expressed in these Terms, have the following responsibilities:
- (a) provide all copy (including data, logos, designs and/or graphic and related materials) to be incorporated into the web site; provision of any other information, ideas or suggestions which are to be expressly considered by us in developing the web site;
 - (b) furnish us with information and assistance as we reasonably require to enable us to construct and maintain the web site; and
 - (c) ensure that any specific requirements you may have for web browsers is included in the brief, as, unless otherwise specified therein, the choice of web browsers and technology used in the development of the web site shall be at the sole discretion of us. In the event that additional Services are requested, or required (as per clause 35.2(b)), in order to meet any specific requirements for web browsers, after we have commenced work on the web site, shall be treated as a variation to the Price, and a strict estimation of further work required shall be submitted to you for approval before proceeding with the variation work.
- 35.3 We will not be responsible for, and accept no liability for, any deficiency or alleged deficiency in the web site which is attributable to:
- (a) incorrect information provided by you, either pursuant to this clause or otherwise;
 - (b) failure by you to provide relevant information, either pursuant to this clause or otherwise; or
 - (c) any third-party products and/or services used by us in creation of the web site.
- 35.4 Subject to clause 35.5, we will provide the maintenance Services in accordance with the maintenance terms set out in our maintenance schedule.
- 35.5 You will procure all necessary authorisations, licences and consents to enable us to have access to the web site in order to provide the maintenance Services.
- 35.6 Although we shall use our knowledge and experience to gain the best results possible, we give no guarantee of the quality of visitor or the position / page rank or volume of visits to the web site, or warranty that the web site will be effective in promoting your business or result in any increase in sales of your products/services. Periodic reporting will be sent to your nominated email address, at our sole discretion.
- 36. Your responsibilities**
- 36.1 When you use the Services, you must:
- (a) comply with all laws, all directors by a regulator, all notices issued by authorisation of, or under, law (e.g., Copyright Act 1994) and reasonable directions by us;
 - (b) keep your account information, password, data, and goods confidential and secure. You remain responsible for any use or misuse of such;
 - (c) follow any reasonable instructions provided by us in relation to the Services;
 - (d) access and use the Services solely in accordance with these terms and conditions and any reasonable instructions provided by us;
 - (e) employ back-up power and surge protectors at your premises;
 - (f) maintain adequate security precautions in connection with your use of the Services (including, but not limited to, failure to use/maintain anti-virus software, accessibility to the data via insecure internet connections, insecure passwords or insecure access to passwords, leaving active connection to the hosted solution unattended or any other event which on the basis of a reasonable test would in the opinion of ours be inadequate etc.);
- (g) failure by you to comply with clause 36.1 will entitle us, at our option, to suspend support without liability until such time as clause 36.1 is complied with.
- 36.2 You must not:
- (a) use, or attempt to use, or permit another person to use or attempt to use, the Services:
 - (i) so as to cause offence, to defame, abuse, communicate obscenities, menace or annoy;
 - (ii) for any purpose or activity of an illegal or fraudulent nature in any jurisdiction, including damaging any property or injuring or killing any person, to breach the security of any computer network (hacking), to breach any person's privacy, or to distribute unsolicited software or junk mail;
 - (iii) for advertising purposes without our express written consent;
 - (iv) to breach any of the intellectual property rights held by us or any third party;
 - (v) to transmit, publish or communicate materials which is defamatory, offensive, abusive, indecent, menacing or unwanted;
 - (vi) to expose us to liability (including any claims for damages);
 - (vii) to install or store any software applications, code or scripts on or through the Services unless prior written approval from us has been obtained;
 - (viii) to disable or circumvent any protection or disabling mechanism related to the Services;
 - (ix) to store, access or operate any data, code, or software on, or in connection with the software that could be categorised or identified as:
 - (A) a computer virus or malicious code;
 - (B) pornographic material; or
 - (C) "warez" or associated with "warez".
 - (xi) in any way which damages, interferes with or interrupts the Services, or a supplier's network used to provide the Services;
 - (xii) to intercept or attempt to intercept any communication not otherwise intended for you;
 - (xiii) contact our suppliers or the wholesale / carrier or third party provider of a service in relation to the Services or service faults. Suppliers may impose fees for doing so and these fees will be passed onto you. They may, however, contact you in relation to any reported service difficulties in relation to appointment making and service restoration, and for this reason we will need to provide you contact details to such parties;
 - (xiv) logon to an account that you are not authorised to access;
 - (xv) access data or take any action to obtain services not intended for you;
 - (xvi) attempt to probe, scan or test the vulnerability of any system, subsystem or network;
 - (xvii) do anything that prevents or hinders us from providing support services to any other person.
- 36.3 If, in our opinion, the Services are being used by anyone in breach of these terms and conditions or internet etiquette, we may:
- (a) refuse to post such infringing information to public areas;
 - (b) remove, review or edit such infringing information from any computer or device on our network, with the exception of private electronic messages;
 - (c) discontinue any infringing communication;
 - (d) suspend the Services indefinitely, or for a specific period;
 - (e) terminate the Services, and refuse to provide the Services to you, or your associates, in the future;
 - (f) inform appropriate government and regulatory authorities of suspected illegal or infringing conduct.
- 36.4 You authorise us to delete without notice or liability any information or materials found on the Products (or equipment controlled by us) that is found to be of an obscene nature, unauthorised, unlawful, uncollected for an excessive period of time or excessive in volume.
- 37. Backups**
- 37.1 We make no warranties or guarantees, implied or express, in respect of the retention of or continued accessibility of any back-ups in connection with the Services.
- 37.2 You acknowledge that we have recommended you to take reasonable steps to back-up your data separately from the Services.
- 37.3 We will put in place and manage back-up procedures described in our quotation or proposal and/or other written communication from us to you.
- 38. Unsolicited E-mail (Spam)**
- 38.1 Spam, or the sending of unsolicited e-mail, from our servers, or using a return e-mail address that is maintained on our servers, is strictly prohibited. Using Spam to advertise a web site hosted on our network is not only illegal under New Zealand law, but also constitutes as a violation of this provision. If your account is found to have been sending spam, whether you are aware, or not aware, of the spam activity, we reserve the right to limit or terminate the e-mail Services on your account at any time and without prior notification.
- 39. Server abuse**
- 39.1 Any attempts to undermine or cause harm to our servers, or a customer of ours, is strictly prohibited. We reserve the right to seek compensation for loss of business and damage done to our servers by you, or dedicated server lessee.
- 39.2 It shall be your responsibility to ensure the security and confidentiality of your account and must not allow any unauthorised use of such by any third party. You will be liable for any infringement of these Terms in respect of your account, irrespective of whether such infringement is by you or any authorised or unauthorised third party.