

**IT SIMPLY LIMITED**  
**Terms and Conditions**

**1. Definitions**

In these terms and conditions:

“Contract” means the contract between the Customer and the Supplier for the provision of Goods and/or Services by the Supplier of which these terms and conditions form part.

“Confidential Information” means information (whether oral, written, electronic or any other form) which is marked or notified as being proprietary or confidential or which, in the normal course of business would be considered to be proprietary or confidential and includes customer and third party data provided by the Customer to facilitate the supplier providing Goods and Services pursuant to this Contract.

“Customer” means the person to whom the Goods and/or Services are to be supplied.

“Fee” means:

- (i) Where a quote or estimate has been given, the fee for the work recorded in that quote; and/or
- (ii) the Supplier’s usual charges for completing the work plus additional charges pursuant to these terms and conditions, plus GST.

“Goods” includes any software, hardware and/or equipment supplied by a third party or the Supplier.

“Property” means the property, premises, site or location where the Goods and/or Services are to be delivered and/or the Services provided by the Supplier.

“Quote” means any quotation or estimate provided by or on behalf of the Supplier.

“Secured Goods” means the Goods referred to in clauses 10.5.1 – 10.5.3.

“Supplier” means IT Simply Limited, its assignors and/or successors.

“Work” includes all Goods and Services supplied or required to be supplied by the Supplier in the course of performance of the Contract.

## **2. Acceptance of Terms and Conditions**

Contracting the Supplier to carry out work or acceptance of a quote provided by the Supplier constitutes acceptance by the Customer of these terms and conditions.

## **3. Fees**

3.1. The Customer shall pay to the Supplier on a time and materials basis, invoices issued for work undertaken in accordance with Clause 6 below, unless prior alternative arrangements are made and agreed in writing.

3.2. All Goods and Services are supplied at the Fee applicable at the date an order is confirmed and the Supplier reserves the right to pass on to the Customer any change in Fee from any third party supplier between the date the customer order is confirmed and the date the Supplier confirms the order with a third party supplier (if required).

## **4. Quotes and Estimates**

4.1. All Quotes and estimates are provided strictly on the following basis:

4.1.1. If additional work is required that could not be foreseen by the Supplier at the time of providing the quote, then the parties will mutually agree the cost of the additional work. If the parties cannot agree the cost of the additional work within a reasonable time then the Supplier may at its option cancel this contract. The Customer may request the return of any Confidential Information.

4.1.2. Any Quote is only valid for seven (7) days from the date of the quote unless otherwise agreed.

4.1.3. Due to changes in exchange rates, interest rates and prices of third party suppliers, the Supplier reserves the right to change the pricing in Quotes and estimates provided to the Customer.

## **5. Variations**

No variations to the work originally contracted for shall be carried out without the agreement of both the Customer and the Supplier. Where the Customer and the Supplier have agreed to a variation the Supplier will be entitled to charge for the work involved in such variation at the Supplier's usual rate.

## **6. Payment**

6.1. The Supplier may issue one or more invoice(s) to the Customer for Work completed and materials supplied for the previous month if a fixed fee payable in advance is not required.

- 6.2. The Customer shall pay the Fee as recorded in the invoice by the 20<sup>th</sup> of the month following the date of any invoice issued by the Supplier.
- 6.3. If full payment is not made by the Customer to the Supplier in accordance with clause 6.2 above then the Customer will be in default under this Contract and otherwise available at law; and
- 6.3.1. The Customer will pay interest on the default monies at the rate of 2% above the commercial overdraft rate charged by the Supplier's bank, at the time of default, payable on a monthly basis from the due date; and
- 6.3.2. The Customer will be liable for all expenses (including solicitor – own client legal costs) incurred by the Supplier as a result of the default; and
- 6.3.3. The Supplier may withhold the further supply of Goods and Services.

## **7. Validity of Payment**

- 7.1. The Customer acknowledges that:
- 7.1.1. All payments made to the Customer's account with the Supplier are in the ordinary course of the Customer's business; and
- 7.1.2. All payments to the Customer's account are received by the Supplier on the reasonably held belief that those payments are valid unless the Customer advises otherwise in writing; and
- 7.1.3. By accepting any payments on or after the due date for payment the Supplier has altered its position in reliance on the validity of those payments.

## **8. Warranty**

- 8.1. The Supplier warrants that if any defect in any workmanship or service provided by the Supplier becomes apparent and is reported to the Supplier within three (3) months of the date of delivery or completion of the service, then the Supplier will either replace or remedy the defect. However:
- 8.1.1. The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
- 8.1.1.1. failure on the part of the customer to properly maintain any goods, system or services; or
- 8.1.1.2. failure on the part of the customer to follow any instructions or guidelines provided by the supplier; or

- 8.1.1.3. any use of any goods or services otherwise than for any application specified on a quote or order form; or
  - 8.1.1.4. the continued use of any goods or services after any defect becomes apparent or would have become apparent to a reasonably prudent operation or user; or
  - 8.1.1.5. fair wear and tear, any accident or force majeure.
- 8.1.2. For goods or services not manufactured by the Supplier, the warranty shall be the current warranty provided by the manufacturer of the goods or services. The supplier shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the goods.
- 8.2. The Supplier further warrants and undertakes that it will:
  - 8.2.1. Perform the services to the best of its knowledge and experience, using due diligence and care, and at all times exercising that degree of skill, competence and professionalism which would be reasonably expected from a skilled and experienced supplier in its field;
  - 8.2.2. Perform the services in an efficient, timely, diligent manner in accordance with the requirements of this Contract;
  - 8.2.3. That the Goods and Services provided do not breach any third party's intellectual property rights;
  - 8.2.4. Comply with all laws, regulations and rules applicable to the provision of the services.

## **9. Personal Property Securities Act 1999 ("PPSA")**

- 9.1. The Customer acknowledges the Supplier's security interest in the Secured Goods ("Collateral") supplied to the Customer but not paid for under these terms and conditions.
- 9.2. The Supplier reserves the right at its discretion to register a financing statement in respect of each category or Goods supplied to the Customer which comprises collateral. On the request by the Supplier the Customer shall promptly execute any documents and do anything else required by the Supplier to ensure that the Supplier's security interest in the collateral created by these terms and conditions constitutes a perfected security interest over the Goods comprising collateral.
- 9.3. The Customer shall not agree to allow any person to file a financing statement over the collateral without the prior consent of the Supplier and shall notify the Supplier immediately

if it becomes aware of any person taking steps to file a financing statement against any of the collateral.

9.4. The Customer and guarantor (if any):

9.4.1. Agree(s) that nothing in s114(1)(a), 117(1), 133, and 134 of the PPSA will apply to these terms and conditions; and

9.4.2. Waive(s) the Customer's right to do any of the following:

9.4.2.1. object to the Supplier's proposal to retain any personal property under s121 of the PPSA;

9.4.2.2. not have Goods damaged when the Supplier removes an accession under s125 of the PPSA;

9.4.2.3. receive notice of the removal of an accession under s129 of the PPSA;

9.4.2.4. apply to the Court for an order concerning the removal of an accession under s131 of the PPSA;

9.4.2.5. 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 these terms and conditions.

**10. Consumer Guarantees Act**

10.1. Where the Supplier is supplying Goods and Services to the Customer for business purposes within the meaning of the Consumer Guarantees Act 1993, pursuant to Section 43 the provisions of that Act will not apply to this contract.

10.2. Where the Supplier is supplying Goods and Services to the Customer other than for business purposes the provisions of clauses 9.2 - 9.5 above will have no effect and the provisions of the Consumer Guarantees Act 1993 will apply.

10.3. Where the Customer supplies the Goods on to a person acquiring them for business purposes it will be a term of the Customer's contract with the buyer of the Goods that the Consumer Guarantees Act 1993 will not apply in respect of the Goods.

**11. Information and Privacy Act**

11.1. For the purpose of facilitating the efficient running of the Supplier's business, the Customer authorises the Supplier:

11.1.1. To collect all information it may require from any third parties and authorises those third parties to release that information to the Supplier; and

- 11.1.2. To hold all information given by the Customer or any third parties to the Supplier;  
and
- 11.1.3. To use that information, including giving information to any other person to facilitate collection of debts from the Customer.
- 11.2. The information will be collected, held and used on the condition that:
  - 11.2.1. It will be held securely at the Supplier's registered office; and
  - 11.2.2. It will be accessible to any of the Supplier's employees and agents who need access to it for the efficient running of the Supplier's business; and
  - 11.2.3. The Customer may request access to and correction of it at any time.
  - 11.2.4. The Supplier will destroy or return the information to the Customer if requested.

## **12. Confidentiality**

- 12.1. Confidential Information for the purposes of this Contract means information (whether in oral, written, electronic or any other form) which is marked or notified as being proprietary or confidential of which, in the normal course of business, would be considered to be proprietary or confidential and includes Customer and third party data provided by the Customer to facilitate the Supplier providing Goods and Services pursuant to this Contract.
- 12.2. **Confidentiality Obligation:** Each party ("Recipient") which receives Confidential Information of the other party ("Disclosing Party") under this Contract acknowledges that all Confidential Information provided to it or to which it is exposed is confidential to the Disclosing Party.
- 12.3. **Loss Suffered:** The Recipient acknowledges and agrees that the Confidential Information is, by virtue of its special nature, valuable property of the Disclosing Party and that the Disclosing Party may suffer damage or loss by any disclosure by the Recipient of the Confidential Information.
- 12.4. **Non-Disclosure:**

The Recipient must:

  - 12.4.1. Treat all Confidential Information as confidential and not make public or disclose to any other person that Confidential Information unless it has first obtained the written consent of Disclosing Party to do so;
  - 12.4.2. Prevent third parties from gaining access to the Confidential Information without the prior written consent of the Disclosing Party; and
  - 12.4.3. Deliver and surrender to Disclosing Party upon request all records of Confidential Information held by it;

12.4.4. Comply with all relevant data protection and privacy laws of New Zealand relating to Confidential Information.

12.5. **Disclosure Required:** The Recipient may disclose Confidential Information if required to do so by a Government Agency or any law or court order, or the rules of any applicable securities exchange after first giving notice to Disclosing Party and after taking all practicable steps to cooperate with Disclosing Party to prevent the disclosure to the maximum extent permitted by law.

### **13. Intellectual Property Rights**

#### **13.1. Ownership of Intellectual Property Rights**

13.1.1. All Intellectual Property Rights which are owned by either party as at the date of this Contract will at all times remain owned by that party exclusively;

13.1.2. The Supplier will retain all Intellectual Property Rights in any software or user documentation supplied with the Service and/or goods; and

13.1.3. Except as expressly provided, nothing in this Agreement confers to any third party user any right or interest in, or licence to use, any of the Supplier's Intellectual Property Rights.

#### **13.2. Licensed Intellectual Property Rights**

13.2.1. The Customer is granted a limited, non-exclusive, non-transferable, non-sublicensable, royalty free Software Licence to use the Supplier's software known as the Practice Intelligence Software to the extent required to enjoy the Service.

13.2.2. The conditions that the Supplier imposes under clause 14.2.1 include:

13.2.2.1. treating the Supplier's Software Intellectual Property as Confidential information under clause 13; and

13.2.2.2. not modifying, disassembling or decompiling any software intellectual property, or reverse engineering any part of any software intellectual property or permitting others to do so.

13.2.3. The Customer's software licence to use the intellectual property rights in accordance with clause 14.2.1 will cease when the Supplier ceases to provide services to the Customer.

### **14. Waiver and Forbearance**

All the parties' rights will remain in full force despite any delay in enforcement. The parties will not be deemed to have waived any condition unless that waiver is in writing and signed

by a duly authorised officer of that party. Any waiver will apply only to the particular matter in respect of which it is given.

## **15. Assignment**

15.1. The Supplier is entitled at any time to assign its rights under the contract. The assignee will be entitled to claim full rights of set off or counter claim against the Customer, its charge holders or successors in respect of the debt or part of the debt which is assigned. The Supplier will provide notice to the Customer of any assignment of its rights under the contract where reasonably possible.

15.2. The Customer is not entitled to assign its rights under this contract.

## **16. Entire Contract**

The Supplier and Customer agree that these terms express the complete agreement between them. There has been no representation made by either party to the other except as expressly set out in this document. There is no inconsistency with the terms of any order that may be lodged by the Customer. If there is any inconsistency then any such order will be of no effect. This contract will not be subject to change or modification except with the prior written consent of both parties.

## **17. Termination**

17.1. This Contract (including any unperformed obligations of the Supplier) may be terminated as follows:

17.1.1. By either party by written notice to the other if the other does not remedy any material breach of this Contract which is capable of being remedied within 14 days after the date on which it receives written notice from the first party requiring it to do so; or

17.1.2. By either party at any time by written notice to the other if the other materially breaches this Contract and that breach is incapable of remedying; or

17.1.3. Either party becoming insolvent; or being subject to the appointment of a receiver, manager, liquidator, or statutory manager; or committing an act of bankruptcy or making a scheme of arrangement with its creditors; or being unlikely to be able to meet its obligations under the Contract; or

17.1.4. The Customer may terminate the Contract at any time by providing three (3) months written notice. If the Customer has entered into a fixed term Contract then on termination the following costs are payable on termination:

17.1.4.1. 50% of the fees payable by the Customer to the Supplier until the end of the fixed term Contract; and

17.1.4.2. any costs incurred by the Supplier by third parties for the provision of the Services for the remainder of the fixed term Contract.

17.2. The agreements of the parties will not merge with termination under this clause.

## **18. Dispute**

18.1. If either party considers that there is a dispute in respect of matters arising out of these Terms and Conditions, then that party shall immediately give notice to the other party setting out details of the dispute. The parties shall endeavour in good faith to resolve the dispute between themselves within thirty (30) days of notice of the dispute. Failing resolution, the parties will commence mediation to resolve the dispute if required by either party.

18.2. The Supplier is a corporate member of IT Professionals NZ (**ITP NZ**) which provides a mandatory code outlining ethical and professional requirements for IT professionals in New Zealand. If the Customer believes that the Supplier has not acted ethically in any aspect of the service, then the Customer should contact ITP NZ to make a complaint to ITP NZ and receive their advice in regard to disciplinary procedures available.

## **19. Liability**

The Customer agrees that the Supplier will not be liable for any loss of profit, consequential loss or loss of business opportunity suffered by the Customer in relation to the Goods or Services supplied.

## **20. Force Majeure**

Neither party will be liable for, or will be considered to be in breach of or default under this Contract on account of, any delay or failure to perform as required by this Contract as a result of any causes or conditions that are beyond such party's reasonable control and that such party is unable to overcome through the exercise of commercially reasonable diligence. If any force majeure event occurs, the affected party will give prompt written notice to the other party and will use commercially reasonable efforts to minimise the impact of the event.