



## TERMS OF TRADE

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### THE PARTIES AGREE:

These Terms of Trade apply to any order placed with PcMedia Technologies Ltd by the Customer for goods or IT services, unless PcMedia Technologies Ltd expressly agrees otherwise in writing. PcMedia Technologies Ltd may amend the Terms of Trade at any time and will provide such changes to the Customer in writing. Placement of an order by the Customer after the date on which the Terms of Trade are received by the Customer will be deemed acceptance of the change by the Customer.

### DEFINITIONS

**"Agreement"** means these Terms of Trade and any other documents including, but not limited to, purchase orders for goods and IT services completed by the Customer and incorporated by reference.

**"Customer"** means the person or entity described as the applicant on the first page.

**"GST"** means goods and services tax as defined in the Goods and Services Tax Act 1985.

**"IT services"** means IT services requested by the Customer from time to time and agreed to by PcMedia Technologies Ltd such services may include installing, configuring and troubleshooting software and hardware and IT consulting and design services.

**"PcMedia"** means PcMedia Technologies Ltd Limited

**"Working Day"** means any day except a weekend, public holiday or regional holiday.

### DESCRIPTION OF GOODS

Any description of the goods that has been given is for identification purposes only and the use of that description does not mean that this Agreement is a sale by description.

### TERMS OF PAYMENT

The Customer shall pay all invoices (without deduction) issued by pcMedia by the 20<sup>th</sup> day of the month following delivery unless otherwise stated on the invoice.

pcMedia will charge interest at the rate of 2% per calendar month on all amounts outstanding after the due date for the initial 2 months and thereafter at the rate of 5% per calendar month compounding monthly on the unpaid balance owing.

The Customer shall be liable for all costs incurred by pcMedia in enforcing its rights under this Agreement including, but not limited to, any debt collection charges, Court costs and legal fees on a full indemnity basis.

If at any time pcMedia believes the Customer's financial status is unsatisfactory, pcMedia may require that payment for any order is made in cash in advance, or security satisfactory to pcMedia to secure payment of all obligations of the Customer in respect of all future deliveries and for any goods previously delivered.

### PRICE REVIEW

Any prices quoted to the Customer are based on the current cost to pcMedia of production and delivery of the goods and the quantities ordered or to be ordered by the Customer. If the Supplier increases the cost to pcMedia then the estimated cost to the Customer will increase. pcMedia will advise The Customer and The Customer will have an opportunity to either accept the new price, cancel the order or change the item. All prices quoted are exclusive of GST, freight, customs duty, excise duty and all other governmental impost or a like nature becoming payable because of the sale of the goods and delivery of the goods to the Customer. All such taxes, duties and other imposts shall accordingly be paid for by the Customer.

### TERM

This Agreement shall commence once pcMedia's approve the credit application and continue in effect until terminated by either party in accordance with this Agreement.



## TERMINATION

pcMedia may, without limiting any other remedy it may have, either terminate this Agreement or suspend deliveries under it if the Customer fails to pay for any one delivery by the due date.

Either party may terminate this Agreement at any time and for any reason by giving the other party notice of that intention in writing.

On termination of this Agreement each party will return all property belonging to the other in whatever form possessed or under the control of that party.

## DELIVERY

All delivery dates quoted are estimates only and pcMedia shall not be liable for any failure to deliver, or for any delay in delivery, arising from any cause pcMedia's control. The Customer will be advised of any delay and will be given the opportunity to cancel or change the order accordingly.

pcMedia may deliver an order by instalments and each instalment may be invoiced separately. pcMedia fails to deliver any part of an order (instalment) the Customer shall not be entitled to rescind or repudiate the entire order, but can cancel or change the item that pcMedia has failed to deliver, in respect of that order.

## PCMEDIA TECHNOLOGIES LTD'S OBLIGATIONS IN RESPECT OF IT SERVICES

pcMedia shall provide any IT services in a competent and professional manner as and when requested by the Customer.

When providing IT services pcMedia shall comply with any workplace and security guidelines and any other instructions specified by the Customer while on its premises.

pcMedia may subcontract IT services to a third party and in doing so shall remain fully responsible as primary contractor for all IT services supplied by that third party. Any act or omission of that third party shall be deemed to be an act or omission of pcMedia Technologies Ltd.

## CUSTOMER'S OBLIGATIONS IN RESPECT OF IT SERVICES

The Customer may request IT services by calling pcMedia on its main telephone number 03 5781100 and providing the customer services team member with the Customer's business name and name of the person calling and the nature of the incident or IT services required.

The Customer shall not use pcMedia IT services in any way which is unlawful.

All information supplied by the Customer to pcMedia shall be complete and accurate including advising pcMedia promptly of any change of premises or postal address.

The Customer shall pay the charges for the requested IT services as set out in Schedule 1 of this Agreement in accordance with the Terms of Payment clause above. pcMedia may change the charges in Schedule 1 from time to time by giving the Customer a minimum of 28 days' notice in writing.

The Customer must perform regular backups of its systems.

If data loss occurs while pcMedia are working on the Customer's system the most recent backup will be restored by pcMedia.

The Customer agrees to comply with all New Zealand intellectual property laws and software licence agreements for all software that it uses and requires pcMedia to install, configure or support when providing IT services and, if requested by pcMedia, provide evidence of a licence being held within 5 Working Days.

Where the IT services require pcMedia to refer an issue to a manufacturer or distributor support bureau, the Customer shall be responsible for all related costs provided that pcMedia shall seek the prior written approval of the Customer for any third party support charges in excess of NZD\$50 plus GST.



## SUPPORT

pcMedia shall provide IT support within normal business hours of 8.30am to 5.30pm Monday to Friday at the Customer's request with a best effort response. If the Customer requires IT support outside normal business hours or during public holiday periods pcMedia may provide such IT support provided this has been arranged in advance by the Customer and subject to availability.

IT support required outside normal business hours shall be charged in accordance with the Standard Charges set out in Schedule 1 of this Agreement as varied from time to time.

## FORCE MAJEURE

pcMedia may suspend or cancel deliveries or IT services in the event of any Act of God, war, riot, fire, explosion, accident, flood, sabotage, inability to obtain fuel, power, raw materials, labour, containers or transportation facilities, governmental laws, regulations, orders or action, breakage or failure of machinery or apparatus, national defence requirements or any other event beyond the reasonable control of pcMedia or in the event of labour trouble, strike, lockout or injunction (whether or not such labour event is within the reasonable control of pcMedia) and shall not be liable for any delay, loss, damage or injury caused as a result.

## COMPENSATION AND LIABILITY

pcMedia may compensate the Customer for loss, costs or damages from IT services provided by pcMedia which are incurred as a direct result of its failure to meet any of its obligations under this Agreement. The maximum amount payable on any claim shall be an amount which is the value of 3 average months' IT services paid by the Customer in the previous 12 month period. Any Claim must be notified to pcMedia within 6 months from the date the notified IT services are supplied to the Customer.

pcMedia shall not be liable to the Customer for any indirect damages or loss (including, but not limited to loss of profits, anticipated savings, economic loss or any consequential damages whatsoever) whether for negligence, breach of contract or otherwise.

No third party supplier (including their officers, employees, contractors and agents) shall be liable to the Customer for any loss or damage of any kind arising from the Customer's use of any IT services. A third party supplier may enforce this clause as a defence to any claim.

## WARRANTY

The Customer acknowledges that any goods and IT services purchased are for business purposes and the Consumer Guarantees Act 1993 does not apply.

pcMedia shall not accept any claim by the Customer whether for alleged damaged or defective goods, shortage of goods or for any other cause (and all such claims shall be deemed absolutely waived by the Customer) unless the Customer notifies pcMedia in writing and pcMedia receives such notice within 7 days after the date of delivery, or, if the damage or defect was not, or would not be, apparent upon a reasonable inspection of the goods when delivered, 7 days after the date when the Customer could reasonably be expected to be aware of the facts giving rise to the claim, whichever first occurs.

The Customer's exclusive remedy shall be for damages and pcMedia's liability for any and all loss or damage resulting from any cause, including negligence, shall in no event exceed the price of the goods in respect of which the claim is made, or at pcMedia's election, the cost of repair or replacement of such goods. Any damage in excess of that cost shall be borne by the Customer. All goods alleged to be defective or otherwise subject to a claim shall be returned to pcMedia at the Customer's expense.

pcMedia accepts no liability for data loss or failure of componentry as a result of servicing. It is the Customer's sole responsibility to ensure that prior to servicing any important data is backed up.

Any hardware supplied by pcMedia will have its warranty terms provided on or with the associated invoice. Any labour provided by pcMedia which involves items covered by a warranty will be charged for at the normal rates applicable at the time. Software warranties are covered by individual licence agreements.

Apart from the warranties expressly given to the Customer in this Agreement, all other warranties, express or implied are excluded to the extent permitted by law. pcMedia takes no responsibility for, nor does it warrant the work of third parties.



## PATENTS AND TRADE MARKS

pcMedia makes no representation of any kind expressed or implied that the goods or IT services provided under this Agreement or the use of such goods or IT services, or articles made from the goods, either alone or in conjunction with other substances will not infringe any patent or trade mark rights. The Customer will notify pcMedia immediately of any claim or suit involving the Customer in which any such infringement is alleged and if pcMedia considers itself to be affected it shall be entitled completely to control the defence or compromise of any such allegation or infringement.

## ASSIGNMENT

This Agreement shall not be assigned by the Customer without the prior written consent pcMedia. For the avoidance of doubt a change in control of the Customer shall be deemed to be an assignment for which consent is required. pcMedia may in its discretion and without notice to the Customer subcontract the whole or any part of the provision of the goods sold or IT services rendered under this Agreement.

## WAIVER

No waiver by pcMedia with respect to any breach or default or any right or remedy shall be deemed to constitute a continuing waiver or any other breach or default or any other right or remedy unless the same be expressed in writing and signed on behalf of pcMedia.

## GOVERNING LAW

The validity, interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws of New Zealand.

## ENTIRE AGREEMENT

This Agreement constitutes the entire understanding of the parties in regards to the provision of goods and IT services and supersedes all prior agreements and understandings, whether written or oral between the parties

Except as provided in this Agreement no conditions understanding or agreement purporting to modify or vary the terms of this Agreement shall be binding on pcMedia unless made in writing.

## SECURITY INTEREST

Ownership and property in the goods remains

with pcMedia until the Customer has discharged all outstanding indebtedness for all goods supplied by pcMedia.

The Customer grants to pcMedia a security interest in all goods previously supplied by pcMedia to the Customer (if any) and all goods that will be supplied in the future by pcMedia to the Customer during the continuance of the parties relationship 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 under this Agreement as and when the same become due.

Where goods are purchased as equipment, until the Customer has paid all money owing to pcMedia, the Customer shall not sell or grant a security interest in the goods without the prior written consent of pcMedia .

The Customer undertakes to:

- sign any further documents and/or provide any further information, such information to be complete, accurate and up-to-date in all respects, which pcMedia may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register ("PPSR");
- indemnify, and upon demand reimburse pcMedia for all expenses incurred in registering a financing statement or financing change statement on the PPSR or releasing any goods charged thereby;
- not register a financing change statement (in accordance with Regulation 9) or a change demand (in accordance with Regulation 10) without the prior written consent of pcMedia;

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- give pcMedia not less than 14 days prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the buyer's address, facsimile number or business practice).

Unless otherwise agreed to in writing by pcMedia, the Customer waives its right to receive a verification statement in accordance with Section 148 of the Personal Property Securities Act 1999 ("PPSA")

To the extent permitted by law the Customer waives its rights under Part 9 (enforcement of security interest) of the PPSA.

## PRIVACY ACT 1993

The Customer acknowledges that the Privacy Act 1993 applies to natural persons only and accordingly pcMedia may, in its sole discretion, collect, use, store and disclose information about the Customer for the purposes of credit approval and such other purposes identified by pcMedia in the supply of IT services to the Customer.

## GUARANTEE

In consideration of pcMedia entering into this Agreement the Guarantor hereby unconditionally and irrevocably guarantees to pcMedia the due and punctual performance and observance by the Customer of its obligations under this Agreement and notwithstanding any other provision in this Agreement this guarantee shall not be affected by the granting of time or other indulgence on the part of pcMedia.

## SEVERABILITY

In the event that any provision of the Agreement is held to be invalid or unenforceable, the remaining provisions of this agreement will remain in full force.

## NOTICES

Any notice or other communication required to be given in writing by either party to the other party must be either:

In the case of pcMedia:

- Delivered to 82 Seymour Street, Blenheim; or
- Posted to PO Box 82, Blenheim; or

In the case of the Customer:

- Delivered to the delivery address as provided for in the Credit Application Form; or
- Posted to the mailing address; or
- Sent by email to [accounts@pcMedia.co.nz](mailto:accounts@pcMedia.co.nz)

Any communication by facsimile transmission will be deemed to be received when transmitted to the correct email or facsimile transmission address of the recipient. Any other communication in writing will be deemed to be received when left at the specified address of the recipient or on the third day following the date of posting.



## STATUS

No provision of this Agreement shall be construed to express or imply a joint venture, partnership or a relationship other than customer and supplier of goods and or services. No employee, agent or other representative of either party shall at any time be deemed to be under the control or authority of the other party or under the joint control of both parties.

## CONFIDENTIAL INFORMATION

If at any time pcMedia becomes aware of the Customer's confidential information including confidential information relating to products, material, procedures, tests or equipment, pcMedia shall not use the information for any purpose not approved by the Customer and shall not disclose that confidential information to any other person unless expressly agreed in writing by you.

## DISPUTES

If a dispute arises out of or relates to this Agreement ("the Dispute") a party to the Agreement may not commence any court or arbitration proceedings relating to the Dispute unless it has complied with the following paragraphs of this clause except where the party seeks urgent interlocutory relief.

A party claiming the Dispute has arisen under this Agreement must give the other party written notice specifying the nature of the Dispute. On receipt of that notice the parties shall use all reasonable endeavours to resolve the Dispute by discussion, consultation, negotiation or other informal means such as mediation. If the Dispute is not resolved within 14 days of the notice being given either party may, by giving written notice to the other party, require the Dispute to be determined by arbitration of a single arbitrator. The arbitrator shall be appointed by the parties or, failing agreement within 7 days of the notice requiring arbitration, by the President of the New Zealand Law Society on application of either party. The arbitration shall be conducted as soon as possible and in accordance with the provisions of the Arbitration Act 1996.

## PASSWORD PROTECTION

pcMedia shall have no obligation or responsibility whatsoever (at law or otherwise) to you for any loss of your data or unauthorised or illegal access to your server or information technology system and in particular shall have no responsibility whatsoever in the event of a breach of your IT system during any period where pcMedia's recommended password security system has not been complied with by the Customer.