

APPLICATION FOR CREDIT – GOODS AND SERVICES

Trade Name: _____

Sole Trader Partnership Trading As Company Other _____

Legal Name: _____

Physical Address: _____

Postal Address: _____

Telephone: 📞 () _____ Fax: 📠 () _____ Mobile: 📱 () _____

Identification Type: _____ Identification Number: _____

E-Mail Address: _____ Date of Birth: _____

Business Activities: _____

If a Company: Registered Office address and Company Number: _____

If a Partnership or Sole Trader: Are copies of all Drivers Licences or Birth Certificates or Passports attached?

Principal Shareholders or Proprietors: _____

Name and address of all Directors, or Partners if a Partnership (if not named above):

Bank: _____ Branch: _____

Solicitor's Name and Address: _____

Accountant's Name and Address: _____

Independent Trade References (not utilities, solicitors, accountants or banks)

1. _____ Phone: (____) _____

2. _____ Phone: (____) _____

3. _____ Phone: (____) _____

Persons with authority to order are: _____

Name of Accounts Payable contact: _____ Email address Accounts: _____

This form completed by: _____ Title: _____

DECLARATION:

I, _____ **(name)** have read and understand the Terms and Conditions of Trade (overleaf or attached) of pcMedia Technologies Limited which form part of and are intended to be read in conjunction with this Application for Credit and agree to be bound by these conditions. I authorize the use of my personal information as detailed in the Privacy Act clause therein.

Signed: _____

Title: _____

Date: _____

1. Definitions

- 1.1 In these terms of trade:
- 1.2 "Contract" means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract;
- 1.3 "PTL" means pcMedia Technologies Limited (the "Vendor"), its successors and assigns or any person acting on behalf of and with the authority of pcMedia Technologies Limited;
- 1.4 "Account" means the Customer's account with the Vendor;
- 1.5 "Customer" means the person or entity signing an Application for Credit or making an Order and any person acting with ostensible authority on behalf of the party named as the Customer;
- 1.6 "Goods" or "Services" means goods or services as supplied by the Vendor to the Customer at any time (where the context so permits the terms "Goods" or "Services" shall be interchangeable for the other) ;
- 1.7 "Guarantor" means any party executing a Guarantee of the Customer's Account with the Vendor;
- 1.8 "Order" or "Orders" means any order or orders of the Customer to the Vendor to supply Goods and/or Services;
- 1.9 "PPSA" means the Personal Property Securities Act 1999;
- 1.10 "Services" means services supplied by the Vendor to the Customer at any time; "Terms" means these Terms and Conditions of Trade.

2. Orders

- 2.1 Orders will be on such forms as the Vendor may require from time to time.

3. Acceptance

- 3.1 Each Order will constitute acceptance by the Customer of these Terms. Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 3.2 Unless otherwise stated in writing, PTL's quotation shall not include any miscellaneous items such as additional or back up media, cables and/or other consumables. If required, approval for any such purchases shall be sought from the Customer.
- 3.3 In the event that PTL is required to provide the Services urgently, that may require PTL to work outside normal business hours (including but not limited to working through lunch breaks, weekends and/or Public Holidays) then PTL reserves the right to charge the Customer additional labour, travel and/or accommodation costs (penalty rates will apply), unless otherwise agreed between PTL and the Customer, a minimum 1 hour charge and call out fee may also be applicable.
- 3.4 The Customer shall as soon as practicable make available to PTL all information, documents, software, hardware and other particulars required by PTL for the provision of the Services.
- 3.5 If PTL has been requested by the Customer to diagnose a fault that requires investigation, disassembly and/or testing, all costs involved (including a call out fee, where such a request is received outside PTL's normal working hours and a physical visit is required) will be charged to the Customer.
- 3.6 The Customer acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, PTL reserves the right to vary the Price with alternative Goods, subject to prior confirmation and agreement of both parties. PTL also reserves the right to halt all Services until such time as PTL and the Customer agree to such changes. PTL shall not be liable to the Customer for any loss or damage the Customer suffers due to PTL exercising its rights under this clause.
- 3.7 Unless expressly stated by PTL, the quoted Price does not include the removal of the Customer's sensitive data. In the event the Customer request such Services, the Price will be adjusted accordingly to include the Services in accordance with this clause.

4. Prices

- 4.1 Prices are subject to change without notice. Unless otherwise specified all Orders will be charged at prices prevailing at the date of delivery of the Goods and/or Services.

5. Delivery

- 5.1 Where an Order makes provision for delivery then delivery will take place at the place stated in the Order. If no place is indicated then delivery will be made at the physical address of the Customer set out in the Order or Application for Credit.
- 5.2 If the Customer is not in a position to accept or take delivery of the Goods or accept provision of the Services as scheduled the Customer will be responsible for all additional charges caused thereby.
- 5.3 Delivery of Goods by the Vendor to a carrier is deemed to be delivery to the Customer.
- 5.4 The Customer must notify the Vendor within two working days of delivery of any shortfall in Goods supplied, time being of the essence.

6. Access for Installation and Provision of Services

- 6.1 The Customer will provide at no cost to the Vendor, adequate access and all necessary facilities including but not limited to power, lighting, unloading, hoisting and lifting facilities, labour, site preparation for the purposes of installation and provision of Services and employee amenities which comply with all statutory requirements.
- 6.2 If the Customer fails to supply adequate access the Vendor may make a further charge to the Customer to cover the additional costs incurred arising from such failure as the Vendor considers reasonable.
- 6.3 Upon the Vendor delivering Goods the Customer will ensure adequate safe storage facilities are provided for protection against theft and damage of any Goods, equipment or other items belonging to the Vendor at no cost to the Vendor.
- 6.4 Where installation or supply of the Goods or provision of the Services requires co-ordination with other trades the Customer will arrange for all such trades to co-ordinate delivery and acknowledges that delays may arise as a result.
- 6.5 Delivery times will be extended to cover delays caused by strikes, lockouts, prohibitions, non-availability of materials or any circumstances beyond the Vendor's control.

7. Health and Safety at Work Act 2015

- 7.1 The Vendor will be responsible for the actions of its employees in terms of section 231 (1) of the Health and Safety at Work Act 2015 ("HSEA"). The Customer will be responsible for compliance with the HSEA in respect of the Customer's site and will advise the Vendor prior to commencement of any work of any hazards.

8. Time of Performances

- 8.1 Time will in no case be of the essence in respect of the delivery of Goods or the provision of Services. The Vendor will not be responsible for any delay in the delivery of Goods or the provision of Services and the Customer will not be entitled to cancel orders because of any such delay. Dates for delivery of Goods and provision of Services are given in good faith and are not to be treated as a condition of sale or purchase.

9. Terms of Payment

- 9.1 Unless otherwise specified, payment for all Goods and Services will be made no later than:
- (a) on supply for Customers without an Account;
- (b) the 20th day of the month following date of Invoice for Customers with an Account.
- 9.2 The Vendor may, at its sole discretion, require payment of a deposit by the Customer prior to processing any Order.
- 9.3 An administration fee may be charged on all overdue amounts in addition to any other charges pursuant to this clause.
- 9.4 Interest will accrue on all amounts overdue at the rate of 2.5% per month and will be calculated on a daily basis on the outstanding balance until payment is received in full by the Vendor.
- 9.5 All costs of or incurred by the Vendor as a result of a default by the Customer including, but not limited to, administration charges, debt collection costs and legal costs as between solicitor and client are payable by the Customer.
- 9.6 If the Customer defaults in any payment or commits any act of bankruptcy or any act which would render it liable to be wound up or if a resolution is passed or proceedings are filed for the winding up of the Customer or if a receiver is appointed for all or any assets of the Customer, the

Vendor may cancel any Order without prejudice to any other rights it may have and payment for all completed Orders will immediately become due.

10. Quotation

- 10.1 Unless otherwise specified, where a written quotation is given by the Vendor for the supply of Goods and Services the quotation will be valid for thirty (30) days from the date of issue;
- 10.2 the Vendor reserves the right to alter the quotation because:
- (a) the Customer requests variations to the supply of Goods and Services; and/or
 - (b) of circumstances beyond the Vendor's control.

11. Taxes and Duties

- 11.1 Unless expressly included in any quotation or Order, Goods and Services Tax and other taxes and duties assessed or levies in connection with the supply of the Goods and Services to the Customer are not included in the price and will be the responsibility of the Customer or, where the payment of such taxes or duties is the responsibility of the Vendor at law, the price will be increased by the amount of such taxes or duties.

12. Payment Allocation

- 12.1 The Vendor may in its discretion allocate any payment received from the Customer towards any invoice that the Vendor determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer the Vendor may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Vendor, payment will be deemed to be allocated in such manner as preserves the maximum value of the Vendor's Purchase Money Security Interest (as defined in the PPSA) in the products.

13. Errors or Omissions

- 13.1 Clerical errors or omissions, whether in computation or otherwise in the quotation, acknowledgement or invoice will be subject to correction.

14. Site Visits

- 14.1 Access for site visits is to be made during normal working hours, unless otherwise agreed to prior to acceptance by the Customer of any quotation submitted by PTL.
- 14.2 It shall be the Customer's responsibility to make the site available on the agreed dates and times. If the Services are delayed or interrupted by the failure of the Customer to make the site available as per the schedule agreed to between PTL and the Customer, any additional costs will be invoiced to the Customer.

15. Risk

- 15.1 From the time of dispatch to the Customer by the Vendor, risk in all Goods supplied will pass to the Customer and any loss, damage or deterioration to the Goods will be borne by the Customer. The Customer will notwithstanding any loss, damage or deterioration to the Goods remain liable to pay for the Goods.
- 15.2 Where PTL gives advice or recommendations to the Customer, or the Customer's agent, regarding any aspect of the scope of the Services (including but not limited to, a particular course of action or product selection not being fit for purpose or the condition of materials supplied by the Customer being inferior, etc.), and such advice or recommendations are not acted upon, then PTL shall require the Customer or their agent to authorise commencement of the Services in writing. PTL shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services nor will such losses or damages be deemed a defect.
- 15.3 Where the performance of any contract with the Customer requires PTL to obtain products and/or services from a third party, the Contract between PTL and the Customer shall incorporate, and shall be subject to, the conditions of supply of such products and/or Services to PTL, and the Customer shall be liable for the cost in full including PTL's margin of such products and/or Services.
- 15.4 The Customer will use any third-party software supplied by PTL, and identified as such, strictly in terms of the licence under which it is supplied.
- 15.5 All third-party software and/or hosting Services is provided at the Customer's own risk and is not in any way warranted by PTL, nor shall PTL be in any way responsible for the implementation or effects of any "patches", "updates", or "fixes" offered by the manufacturer of the software. Further, the Customer agrees to indemnify PTL against all consequential loss arising out of any defect or failure in products (including delivery time-lags), hosting services or software supplied by any third party.
- 15.6 PTL may supply Goods to the Customer where it is required for the provision of Services. The Customer may request upgrades to or newer versions of the Goods and PTL will advise the Customer of the availability of such Goods and the additional cost associated with the supply of the Goods.
- 15.7 PTL shall not be liable for any loss or damage to the Customer's software or hardware caused by any 'updates' provided for that software.
- 15.8 PTL shall not be held liable for any loss, corruption, or deletion of files or data (including, but not limited to software programmes) resulting from the Services provided by PTL. It is the sole responsibility of the Customer to back-up any data which they believe to be important, valuable, or irreplaceable prior to PTL providing the Services. The Customer accepts full responsibility for the Customer's software and data and PTL is not required to advise or remind the Customer of appropriate backup procedures.
- 15.9 PTL shall not be liable whatsoever for:
- (a) delays caused by any other third party suppliers that impacts on the provision of the Services by PTL; or
 - (b) products and/or works supplied by the Customer and/or any other third party; or
 - (c) any defect or damage resulting from incorrect or faulty installation carried out by any other third party
- 15.10 If the Customer instructs PTL to rectify any damage caused by any other third party, this will become a variation to the original quotation and will be charged at PTL normal hourly rate.
- 15.11 The Customer acknowledges that:
- (a) PTL holds no liability and offers no warranty for installation Services provided by other contractors appointed by the Customer; and
 - (b) where the Customer has supplied materials for PTL to complete the Services, the Customer acknowledges and accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. PTL shall not be responsible for any defects in the Services, any loss or damage to the Goods (or any part thereof), howsoever arising from the use of materials supplied by the Customer.

16. Ownership

- 16.1 The Vendor and the Customer agree that ownership of the Goods or Services shall not pass until:
- (a) the Customer has paid the vendor all amounts owing to the vendor; and
 - (b) the Customer has met all of its other obligations to the vendor.
- 16.2 It is further agreed that:
- (a) If any of the Goods are attached, fixed or incorporated in or used as material for other goods before payment is made ownership in the whole of the other goods will be and remain with the Vendor until payment is made. The Vendor's Security Interest in the Goods will continue in the terms of section 82 of the PPSA.
 - (b) The Vendor will have a right to stop and retrieve the Goods in transit whether or not ownership has passed.
 - (c) Until payment is made by the Customer, the Customer agrees:
 - (i) to enable the Goods to be readily identifiable as the property of the Vendor;
 - (ii) to hold the Goods as trustee for the Vendor and will deal with the Goods as agent for and on behalf of the Vendor (but will not hold the Customer out as an agent of the Vendor to any third parties);
 - (iii) that if the Goods are re-sold, the proceeds of re-sale will belong to the Vendor and the Customer will keep the proceeds of sale in a separate account for which separate records are kept;
 - (iv) the Customer should not convert or process the Materials or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Vendor and must sell, dispose of or return the resulting product to the vendor as it so directs.

17. Export Prohibition

- 17.1 The Goods provided pursuant to these Terms are sold for use in New Zealand only and are not to be exported elsewhere, directly or indirectly, without the prior written consent of the Vendor.
- 17.2 In the event that the Vendor consents to the export of the Goods the Customer is responsible for all costs and compliance with any export regulations in force within the country for which the Goods are destined.
- 18. Recovery of Goods**
- 18.1 In the event of non-payment or if payment of the Customer's Account is overdue the Vendor will be entitled without prejudice to any other right it has at law or in equity to enter the place where the Goods are stored whether at the Customer's premises or property or the premises or property of a third party for the purpose of recovering and taking possession of any Goods supplied.
- 18.2 The Customer warrants to the Vendor that where the Goods are stored on the premises or property of a third party the Customer is acting as agent for the third party and has the full authority of the third party to authorise entry on to the premises or property of the third party for the purpose of recovering the Goods supplied without releasing the Customer from liability.
- 18.3 The Vendor will not be responsible for any damage reasonably caused in the course of removal of Goods supplied whether such Goods are in the possession of the Customer or a third party, and the Customer indemnifies the Vendor to the full extent in respect of damage caused in the course of removal from the property of a third party.
- 18.4 The Vendor may resell any Goods seized pursuant to this clause and apply the proceeds towards payment of the Customer's debt to the Vendor. Any shortfall will remain the liability of the Customer. The Customer indemnifies the Vendor for all costs and expenses including legal costs as between solicitor and client which the Vendor may incur in recovering the Goods and any monies owed to it.
- 19. Warranties**
- 19.1 Unless specified in writing, the Vendor gives no warranty express or implied as to the quality, description or fitness for any particular purpose of the Goods and Services.
- 19.2 Where applicable, manufacturer's warranties will attach to the Goods.
- 19.3 Where the Customer is a consumer within the meaning of the Consumer Guarantees Act 1993 the Customer will have all the rights and remedies provided under that Act but no others.
- 19.4 Where Goods supplied are defective in terms of any condition warranty or guarantee or otherwise do not conform to the Order (other than as to quantum), the Vendor will at its discretion replace or repair any faulty Goods or pay the cost of replacing them, but only if a claim is made in writing by the Customer within seven days of delivery of the Goods time being of the essence.
- 20. Compliance**
- 20.1 The Customer will be solely responsible for obtaining any necessary permits under and in compliance with all legislation, regulations, by-laws or rules having the force of law in connection with the installation operation and provision of the Goods and Services.
- 21. Personal Property Securities Act 1999**
- 21.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
- these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - a security interest is taken in all present or after acquired Goods and/or collateral (account) – being a monetary obligation of the Customer to the Vendor for Goods that have previously been supplied and that will be supplied in the future by the Vendor to the Customer.
- 21.2 The Customer hereby acknowledges that these Terms and Conditions of Trade constitute a security agreement which creates a security interest in favour of the Vendor:
- for all Goods previously supplied by the Vendor to the Customer (if any); and
 - for all of its present and after acquired Goods; and
 - for intellectual property arising out of or in connection with the Services.
- 21.3 The Customer agrees to grant a "Purchase Money Security Interest" to the Vendor in respect to all amounts owed by the Customer to the Vendor, as that term is defined in the PPSA.
- 21.4 The Customer acknowledges and agrees that by making an Order the Customer grants a security interest (by virtue of clause 16 of these Terms) to the Vendor in all Goods supplied by the Vendor to the Customer pursuant to that Order and any subsequent supplies of Goods to the Customer notwithstanding anything express or implied to the contrary contained in the Customer's purchase order and that such security interest may be a Purchase Money Security Interest as defined in the PPSA.
- 21.5 The Customer grants to the Vendor a Security Interest in all of the Customer's present and after-acquired property that the Vendor has performed services on or to or in which goods or materials supplied or financed by the Vendor have been attached or incorporated.
- 21.6 The Customer undertakes:
- to sign any further documents and/or provide any further information (which information the Customer warrants to be complete, accurate and up-to-date in all respects) which the Vendor may reasonably require to enable registration of financing statements or financing change statements on the Personal Property Securities Register ("PPSR");
 - not to register a financing change statement as defined in section 135 of the PPSA or make a demand to alter a financing statement pursuant to section 162 of the PPSA in respect of the Goods without the prior written consent of the Vendor;
 - to give the Vendor not less than 14 days' prior written notice of any proposed change in the Customer's name and/or any other changes in the Customer's details (including but not limited to changes in the Customer's address, facsimile number, email address; trading name or business practice);
 - to pay all costs incurred by the Vendor in registering and maintaining any financing statement (including registering a financing change statement) on the PPSR and/or enforcing or attempting to enforce any security interest created by these Terms including executing subordination agreements;
 - to be responsible for the full costs incurred by the Vendor (including actual legal fees and disbursements on a solicitor/client basis) in obtaining an order pursuant to section 167 of the PPSA; and
 - to waive any rights it may have under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA.
- 21.7 Pursuant to section 148 of the PPSA, unless otherwise agreed to in writing by the Vendor, the Customer waives the right to receive the verification statement in respect of any financing statement or financing change statement relating to the security interest.
- 21.8 To the maximum extent permitted by law, the Customer waives its rights and, with the Vendor's agreement, contracts out of its rights under sections referred to in sections 107(2), 8(e) and (g) to (l) of the PPSA.
- 21.9 The Customer agrees that nothing in section 114(1)(a), 133 and 134 of the PPSA will apply to these Terms, and, with the Vendor's agreement, contracts out of such sections.
- 21.10 The Customer and the Vendor agree that section 109(1) of the PPSA is contracted out of in respect of particular Goods if and only for as long as the Vendor is not the secured party with priority over all other secured parties in respect of those Goods and Services.
- 21.11 The Customer agrees that immediately on request by the Vendor the Customer will procure from any third parties such agreement and waivers as the Vendor may at any time require to protect the Vendor's security position.
- 21.12 Unless otherwise agreed to in writing by the Vendor, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 21.13 The Customer shall unconditionally ratify any actions taken by the Vendor under clauses 21.1 to 21.12.
- 22. Events of Default**
- 22.1 All payments will become immediately due to the Vendor and the Vendor may at its option suspend or terminate these Terms and/or exercise any of the remedies available to it under these Terms in the event that:
- a receiver is appointed over any of the assets or undertaking of the Customer;
 - an application for the appointment of a liquidator is filed against the Customer which remains unsatisfied for a period of 10 days, or any of the conditions necessary to render the Customer liable to have a liquidator exist, or a liquidator is appointed;
 - the Customer goes into voluntary liquidation, amalgamates with another company or acquires its own shares in accordance with the Companies Act 1993;

- (d) the Customer suspends payments to its creditors or makes or attempts to make an arrangement or composition or scheme with its creditors; or
- (e) the Customer becomes insolvent within the meaning of the Insolvency Act 2006 or is, becomes, or is presumed to be unable to pay its debts as they fall due as defined in section 287 of the Companies Act 1993 or commits any act of bankruptcy.

23. Authority to Sell Goods and Services Supplied

23.1 Notwithstanding that title in all Goods and Services is retained by the Vendor, the Customer is authorised to sell the Goods and Services in the ordinary course of business provided that the authority may be removed by written notice if the Vendor considers the credit of the Customer to be unsatisfactory or if the Customer is in default in the performance of its obligations to the Vendor and will be deemed automatically revoked if any of the events in clause 23 occur.

24. Sale of Goods and Services Supplied

- 24.1 Where Goods not already passed to the Customer are sold by the Customer in the ordinary course of business, the book debt created on the sale and the proceeds of sale when received will be held by the Customer for the Vendor in terms of section 45 of the PPSA.
- 24.2 Where any proceeds of sale are placed in the Customer's bank account the funds in the Customer's bank account will be deemed to be held on trust for the Vendor to the extent of the proceeds of sale.
- 24.3 Where any payments are made from the Customer's bank account otherwise than to the Vendor, payment will be deemed to have been made from all other funds in the Customer's bank account and not from funds held on trust for the Vendor.
- 24.4 The obligation to hold funds in trust imposed by this clause and the Vendor's entitlements under the PPSA will continue for so long as the Vendor is unpaid for all Goods and Services supplied to the Customer.

25. Cancellation

- 25.1 Without prejudice to any other rights or remedies PTL may have, if at any time the Customer is in breach of any obligation (including those relating to payment and/or failure to remedy any breach in respect of this Contract within thirty (30) working days of receipt by the Customer of such notice/s) then PTL may suspend the Services immediately. PTL will not be liable to the Customer for any loss or damage the Customer suffers because PTL has exercised its rights under this clause.
- 25.2 PTL may cancel any Contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are commenced by giving written notice to the Customer. On giving such notice PTL shall repay to the Customer any money paid by the Customer for the Services. PTL shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 25.3 PTL reserves the right to suspend Services if payment is not received within 7 days of invoice payment date.
- 25.4 In the event that the Customer cancels delivery of the Services the Customer shall be liable for any and all loss incurred (whether direct or indirect) by PTL as a direct result of the cancellation (including, but not limited to, any loss of profits).

26. Security

26.1 Without prejudice to such other rights as the Vendor may have pursuant to these Terms, the Vendor reserves the right to request from the Customer such security as the Vendor may from time to time think desirable to secure to the Vendor all sums due to the Vendor and may refuse to supply further Goods and Services to the Customer until such security is given.

27. Liability

- 27.1 The Vendor's liability to the Customer will be limited to the value of the Order supplied out of which any such liability arose.
- 27.2 The Contract and Commercial Law Act 2017, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon the Vendor which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on the Vendor the Vendor's liability will, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- 27.3 Except as otherwise provided above the Vendor will not be liable for any loss or damage of any kind whatsoever, arising from the supply of Goods and Services by the Vendor to the Customer including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Goods and Services provided by the Vendor to the Customer.
- 27.4 The Customer will indemnify the Vendor against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of the Vendor or otherwise, brought by any person in connection with any matter, act, omission, or error by the Vendor its agents or employees in connection with the Goods and Services.

28. Copyright And Intellectual Property

- 28.1 Unless it is specifically agreed in writing to the contrary, the Vendor retains all intellectual property rights, including copyright, patents, registered designs, source code, and all protection of confidential information in respect of any Goods and Services provided by the Vendor for/to the Customer.
- 28.2 The Customer will at all times keep the Vendor advised of any infringement or potential infringement by a third party of the Vendor's intellectual property rights.
- 28.3 The Customer will immediately advise the Vendor of any alleged infringement by the Vendor of a third party's intellectual property rights. The Customer will indemnify and hold harmless the Vendor against any losses, costs, actions or liabilities suffered or incurred as a consequence of such infringement or alleged infringement.
- 28.4 The Vendor owns and has copyright in all designs, specifications, documents, source code and software produced by the Vendor in connection with the Goods provided pursuant to these Terms and the client may use any Goods incorporating the same if such Goods are paid for in full and applied for the purpose for which they were intended and supplied by the Vendor.

29. Suitability of Goods and Services

29.1 The Customer must satisfy itself that the Goods and Services as ordered are fit and suitable for the purpose for which they are required. The Vendor makes no warranties or representation and expressly negates any implied or expressed condition that the Goods and Services will be suitable for a particular purpose or use for which the Customer may use them. The Customer accepts all risk and responsibility for consequences arising from the use of the Goods and Services whether singularly or in combination with other Goods and Services.

30. Dimensions and Specifications

- 30.1 Dimensions and specifications contained or referred to in any Order, catalogues, brochure or other publications maintained or issued by the Vendor are estimates only.
- 30.2 Unless otherwise expressly agreed in writing, it is not a condition of these Terms or any Order that the Goods and Services will correspond precisely with any dimensions and specifications recorded in an Order and customary tolerances or in the absence of customary tolerances, reasonable tolerances will be allowed.

31. Assignment

- 31.1 The Customer will not assign all or any of its rights or obligations or any debt (or part thereof) under these Terms without the written consent of the Vendor.
- 31.2 The Vendor may also assign or sub-contract any part of the provision of the Goods and Services which is to be performed under any contract.
- 31.3 In respect of any assignment by the Vendor pursuant to this clause, the Assignee will be entitled to the full rights of the Vendor.

32. Disputes

32.1 In the event of any dispute arising between the Vendor and the Customer, such dispute will in the first instance be referred to mediation for resolution.

- 32.2 In the event that resolution by mediation is not achieved to the satisfaction of both parties within 30 days of referral to mediation, either party may then take legal action to resolve the dispute.
- 32.3 Nothing in this clause prevents the Vendor from taking legal action to enforce payment of any debt due, nor where required to seek interlocutory or injunctive relief.
- 33. Notices**
- 33.1 All notices required or committed under these Terms are to be served as provided in sections 353, 359, 360 and 361 of the Property Law Act 2007 and section 387 of the Companies Act 1993, or by facsimile, in which case notice is deemed to be given the day after sending.
- 34. Validity**
- 34.1 If any provision of these Terms is invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.
- 35. Changes of General Terms and Conditions**
- 35.1 The Vendor may at any time refuse an order by the Customer or decline to approve any application by the Customer for any reason whatsoever.
- 35.2 The existence of an account by the Customer with the Vendor does not automatically entitle the Customer to credit in the future.
- 35.3 Failure by the Vendor to enforce any of the terms and conditions contained in these Terms will not be deemed to be a waiver of any of the rights or obligations the Vendor has under these Terms.
- 35.4 The Vendor may from time to time by written notice to the Customer amend, add to or repeal the trading conditions covered by these Terms or may substitute any fresh trading conditions and such amendment, addition or substitute trading conditions will be binding on the Customer fourteen days after the date of delivery of the notice.
- 36. Force Majeure**
- 36.1 Neither party shall be liable for any default due to any act of God, war, terrorism, pandemic, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party (referenced as Force Majeure).
- 37. Privacy Policy**
- 37.1 All emails, documents, images or other recorded information including Personally Identifiable Information (PII) as defined and referred to in clause 38.4 held or used by the Vendor is considered confidential. the Vendor acknowledges its obligation in relation to the handling, use, disclosure and processing of PII pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 8 of the Act and any statutory requirements where relevant in a European Economic Area "EEA" then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). the Vendor acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customers PII, held by the Vendor that may result in serious harm to the Customer, the Vendor will notify the Customer in accordance with the Act and/or the GDPR. Any release of such PII must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 37.2 Notwithstanding clause 38.1, privacy limitations will extend to the Vendor in respect of Cookies where transactions for purchases/orders transpire directly from the Vendor's website. the Vendor agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection the Customers Personal Information such as:
- (a) IP address, browser, email Customer type and other similar details;
 - (b) tracking website usage and traffic;
 - (c) reports which are available to the Vendor when the Vendor sends an email to the Customer; so the Vendor may collect and review that information (collectively "PII")
- 37.3 If the Customer consents to the Contractor's use of Cookies on the Contractor's website and later wish to withdraw that consent, the Customer may manage and control the Contractor's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 37.4 The Customer authorises the Vendor or the Vendor's agent to:
- (a) access, collect, retain and use any information about the Customer;
 - (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (e.g. email, Facebook or Twitter details), or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Customer.
 - (b) disclose information about the Customer, whether collected by the Vendor from the Customer directly or obtained by the Vendor from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.
- 37.5 Where the Customer is an individual the authorities under clause 38.4 are authorities or consents for the purposes of the Privacy Act 2020.
- 37.6 The Customer shall have the right to request the Vendor for a copy of the PII about the Customer retained by the Vendor and the right to request the Vendor to correct any incorrect PII about the Customer held by the Vendor.
- 38. Entire Agreement**
- 38.1 These Terms constitute the entire agreement and supersede and extinguish all prior agreements and understandings between the Vendor and the Customer.
- 39. Other Agreements**
- 39.1 If there is inconsistency between these Terms and any order submitted by the Customer or any other arrangement between the Vendor and Customer, these Terms prevail unless otherwise agreed in writing by the parties.
- 40. Governing Law**
- 40.1 These Terms will be interpreted in accordance with and governed by the laws of New Zealand and the Wellington Courts will have exclusive jurisdiction over any dispute in relation to the Goods and Services.