



TechEase

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# Terms & Conditions of Trade

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## 1 Definitions

- 1.1 "Contractor" shall mean TechEase its successors and assigns or any person acting on behalf of and with the authority of TechEase.
- 1.2 "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by the Contractor to the Client.
- 1.3 "Guarantor" shall mean that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Goods" shall mean Goods supplied by the Contractor to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and includes Goods described on any invoices, quotation, work authorisation or any other forms as provided by the Contractor to the Client.
- 1.5 "Equipment" shall mean all Equipment including any accessories supplied on hire by the Contractor to the Client (and where the context so permits shall include any supply of services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by the Contractor to the Client.
- 1.6 "Services" shall mean all services supplied by the Contractor to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.7 "Price" shall mean the price payable for the Goods as agreed between the Contractor and the Client in accordance with clause 3 of this contract.

## 2 Acceptance

- 2.1 Any instructions received by the Contractor from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by the Contractor shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of the Contractor.
- 2.4 The Client shall give the Contractor not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, phone number, or business practice). The Client shall be liable for any loss incurred by the Contractor as a result of the Client's failure to comply with this clause.

- 2.5 Goods are supplied by the Contractor only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.
- 2.6 The Client accepts and acknowledges that in the event that the Contractor is denied access to the worksite on the agreed start date, then the Contractor reserves the right to charge the Client for all costs incurred by the Contractor (including, but not limited to, any loss of profits, employee wages, mileage).

### 3 Price and Payment

- 3.1 At the Contractor's sole discretion the Price shall be either:
- as indicated on invoices provided by the Contractor to the Client in respect of Goods supplied; or
  - the Contractor's current price at the date of delivery of the Goods according to the Contractor's current Price list; or
  - the Contractor's quoted Price (subject to clause 3.2) which shall be binding upon the Contractor provided that the Client shall accept the Contractor's quotation in writing within sixty (30) days.
- 3.2 The Contractor reserves the right to change the Price in the event of a variation to the Contractor's quotation. Any variation from the plan of scheduled works or specifications (including, but not limited to, for overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges, additional works required due to hidden or unidentifiable difficulties beyond the control of the Contractor or as a result of increases to the Contractor in the cost of materials and labour) will be charged for on the basis of the Contractor's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 3.3 At the Contractor's sole discretion, a non-remunerable deposit may be required.
- 3.4 At the Contractor's sole discretion:
- payment shall be due on the supplied invoice due date (usually 7 days)
  - payment shall be due on delivery of the Goods; or
  - payment shall be due before delivery of the Goods; or
  - payment for approved Clients shall be due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices.
- 3.5 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 3.6 Payment will be made by direct credit, or by any other method as agreed to between the Client and the Contractor.

- 3.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

## 4 Delivery of Goods

- 4.1 At the Contractor's sole discretion delivery of the Goods shall be deemed to have taken place once the Contractor has installed all Goods (including, but not limited to, Computer hardware, software etc) and provided all Services (including, but not limited to, Computer or server maintenance, repairs, software installation, consulting etc) as have been agreed between the parties to this contract.
- 4.2 At the Contractor's sole discretion, the costs of delivery are included in the Price.
- 4.3 The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. If the Client is unable to take delivery of the Goods as arranged then the Contractor shall be entitled to charge a reasonable fee for redelivery.
- 4.4 The Contractor may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 4.5 The failure of the Contractor to deliver shall not entitle either party to treat this contract as repudiated.
- 4.6 The Contractor shall not be liable for any loss or damage whatsoever due to failure by the Contractor to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of the Contractor.

## 5 Equipment Hire

- 5.1 The Equipment shall at all times remain the property of the Contractor and is returnable on demand by the Contractor. If the Equipment is not returned to the Contractor in the condition in which it was delivered the Contractor retains the right to charge the Price of repair or replacement of the Equipment.
- 5.2 The Client shall;
- a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to lien over the Equipment.
  - b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.
  - c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by the Contractor to the Client.

- 5.3 5.3 The Client accepts full responsibility for the safekeeping of the Equipment and the Client agrees to insure, or self-insure, the Contractor's interest in the Equipment and agrees to indemnify the Contractor against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

## 6 Risk

- 6.1 If the Contractor retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Contractor is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Contractor is sufficient evidence of the Contractor's rights to receive the insurance proceeds without the need for any person dealing with the Contractor to make further enquiries.
- 6.3 Where the Client expressly requests the Contractor to leave Goods outside the Contractor's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Client's sole risk and it shall be the Client's responsibility to ensure the Goods are insured adequately or at all.
- 6.4 Any advice, recommendation, information, assistance or service provided by the Contractor in relation to Goods or Services supplied is given in good faith and shall be accepted without liability on the part of the Contractor and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same considering the use to which the Client makes or intends to make of the Goods or Services.

## 7 Access

- 7.1 The Client shall ensure that the Contractor has clear and free access to the work site at all times to enable them to undertake the works. The Contractor shall not be liable for any loss or damage to the site unless due to the negligence of the Contractor.

## 8 Title

- 8.1 The Contractor and Client agree that ownership of the Goods shall not pass until:

- a) the Client has paid the Contractor all amounts owing for the particular Goods; and
  - b) the Client has met all other obligations due by the Client to the Contractor in respect of all contracts between the Contractor and the Client.
- 8.2 Receipt by the Contractor of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Contractor's ownership or rights in respect of the Goods shall continue.
- 8.3 It is further agreed that:
- a) where practicable the Goods shall be kept separate and identifiable until the Contractor shall have received payment and all other obligations of the Client are met; and
  - b) until such time as ownership of the Goods shall pass from the Contractor to the Client the Contractor may give notice in writing to the Client to return the Goods or any of them to the Contractor. Upon such notice being given the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and
  - c) the Client is only a bailee of the Goods and until such time as the Contractor has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Client owes to the Contractor for the Goods, on trust for the Contractor; and
  - d) until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that the Contractor will be the owner of the end products; and
  - e) if the Client fails to return the Goods to the Contractor then the Contractor or the Contractor's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Goods are situated as the invitee of the Client and take possession of the Goods, and the Contractor will not be liable for any reasonable loss or damage suffered as a result of any action by the Contractor under this clause.

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

- 9.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - b) a security interest is taken in all Goods previously supplied by the Contractor to the Client (if any) and all Goods that will be supplied in the future by the Contractor to the Client.
- 9.2 The Client undertakes to:
- a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Contractor may reasonably require registering a financing statement or financing change statement on the Personal Property Securities Register;

- b) indemnify, and upon demand reimburse, the Contractor for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
  - c) not register a financing change statement or a change demand without the prior written consent of the Contractor.
- 9.3 The Contractor and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 9.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 9.5 Unless otherwise agreed to in writing by the Contractor, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 9.6 The Client shall unconditionally ratify any actions taken by the Contractor under clauses 9.1 to 9.5.

## 10 Client's Disclaimer

- 10.1 The Client hereby disclaims any right to rescind, or cancel any contract with the Contractor or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by the Contractor and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.

## 11 Defects

- 11.1 The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Contractor of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Contractor an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Contractor has agreed in writing that the Client is entitled to reject, the Contractor's liability is limited to either (at the Contractor's discretion) replacing the Goods or repairing the Goods.
- 11.2 Goods will not be accepted for return other than in accordance with 11.1 above.

## 12 Warranty



- 12.1 The warranty shall be the current warranty provided by the manufacturer of the Goods. The Contractor 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.

## 13 Consumer Guarantees Act 1993

- 13.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by the Contractor to the Client.

## 14 Intellectual Property

- 14.1 Where the Contractor has designed, drawn or written Goods for the Client, then the copyright in those designs and drawings and documents shall remain vested in the Contractor, and shall only be used by the Client at the Contractor's discretion.
- 14.2 The Client warrants that all designs or instructions to the Contractor will not cause the Contractor to infringe any patent, registered design or trademark in the execution of the work as instructed by the client.
- 14.3 Client's order and the Client agrees to indemnify the Contractor against any action taken by a third party against the Contractor in respect of any such infringement.

## 15 Default & Consequences of Default

- 15.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one-half percent (2.5%) per calendar month (and at the Contractor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 15.2 If the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by the Contractor.
- 15.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in pursuing the debt including legal costs on a solicitor and own client basis and the Contractor's collection agency costs.

- 15.4 Without prejudice to any other remedies the Contractor may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Contractor may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. The Contractor will not be liable to the Client for any loss or damage the Client suffers because the Contractor has exercised its rights under this clause.
- 15.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 15.6 Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable in the event that:
- a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Client will be unable to meet its payments as they fall due; or
  - b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

## 16 Security and Charge

- 16.1 Despite anything to the contrary contained herein or any other rights which the Contractor may have howsoever:
- a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Contractor or the Contractor's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that the Contractor (or the Contractor's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
  - b) should the Contractor elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis.
  - c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Contractor or the Contractor's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 16.1.

## 17 Compliance with Laws

- 17.1 The Client and the Contractor shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.
- 17.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the works.
- 17.3 The Client agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

## 18 Cancellation

- 18.1 The Contractor may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice the Contractor shall repay to the Client any sums paid in respect of the Price. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.2 In the event that the Client cancels delivery of the Goods the Client shall be liable for any loss incurred by the Contractor (including, but not limited to, any loss of profits) up to the time of cancellation.
- 18.3 Cancellation of orders for Goods made to the Client's specifications or non-stocklist items will definitely not be accepted, once production has commenced.

## 19 Privacy Act 1993

- 19.1 The Client and the Guarantor/s (if separate to the Client) authorises the Contractor to:
- a) collect, retain and use any information about the Client and/or Guarantors, for the purpose of assessing the Client's and/or Guarantors creditworthiness or marketing products and services to the Client and/or Guarantors; and
  - b) disclose information about the Client and/or Guarantors, whether collected by the Contractor from the Client and/or Guarantors directly or obtained by the Contractor 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 Client and/or Guarantors.
- 19.2 Where the Client and/or Guarantors are an individual the authorities under clause 19.1 are authorities or consents for the purposes of the Privacy Act 1993.

- 19.3 The Client and/or Guarantors shall have the right to request the Contractor for a copy of the information about the Client and/or Guarantors retained by the Contractor and the right to request the Contractor to correct any incorrect information about the Client and/or Guarantors held by the Contractor.

## 20 General

- 20.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 20.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Magistrates Court of Auckland.
- 20.3 The Contractor shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Contractor of these terms and conditions.
- 20.4 In the event of any breach of this contract by the Contractor the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 20.5 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Contractor nor to withhold payment of any invoice because part of that invoice is in dispute.
- 20.6 The Contractor may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 20.7 The Contractor reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Contractor notifies the Client of such change.
- 20.8 The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if section 15(d) were omitted from the Contractual Remedies Act 1979.
- 20.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 20.10 The failure by the Contractor to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Contractor's right to subsequently enforce that provision.