

## TERMS AND CONDITIONS OF SUPPLY

### 1 Terms

The only terms and conditions, which will be binding on **LINK Information Technologies Limited** (from here on known as "the Company"), are these terms and conditions, any other additional terms the Company expressly accepts in writing, and those imposed by law without right of exclusion. In the event of conflicting terms, the terms and conditions in this agreement shall prevail.

### 2 Assignment

The Customer may not assign all or any of its rights or obligations under this contract without the prior written consent of the Company.

### 3 Waiver

The failure of the Company at any time to enforce any provision of this agreement shall not be construed as a waiver of any such provision or shall not in any way affect the validity of this contract or any part thereof. All waivers shall be effective only in writing by the Company.

### 4 Title

(a) It is the intention of the Company and is agreed by the Customer that all goods remain the property of the Company until –

(i) Payment is made in full by the Customer; and

(ii) The Customer has met all other obligations due by the Customer to the Company in respect of all contracts between the Company and the Customer, and that the goods, or proceeds of the sale of the goods, shall be kept separate until the Company shall have received payment and all other obligations are met.

(b) Where the Company supplies the customer with computer software, title to the computer software shall remain with the original owner or licensor of the computersoftware and the Customer agrees that use of the computer software will be subject to the appropriate licence agreement as supplied to the customer with the computer software.

(c) The Customer authorises the Company and its agents to enter any premises or property and uplift the goods in the event of a default in payment.

(d) The Customer will hold the goods or any of them on trust for the Company as bailee of the Company until property in the goods has passed to the Customer.

(e) The Customer shall insure and keep insured the goods to the full price against all risks until title in the goods has passed to the Customer.

### 5 Risk

(a) Risk in the goods shall pass to the Customer on dispatch from the Company's premises.

(b) Goods are forwarded uninsured, unless the Company instructs the Customer otherwise or an undertaking to the contrary is given in the delivery notice, and the Customer is responsible for insurance of all goods in transit from the time of dispatch from the Company's premises.

(c) If the Company agrees to arrange transit, freight or insurance, then such arrangements shall be made as agents for the Customer and without liability to the Company.

### 6 Force majeure

The Company is not liable for failure or delay in supply or delivery occasioned by strike, industrial dispute, natural disaster, shortage or unavailability of stocks of products or raw materials, shortage of labour, lack of skilled labour, failure of the Customer's supplier's delay in transit, import restriction, legislative governmental or other prohibition or restriction, fire, flood, hostilities,

commotions or other causes whatsoever beyond the Company's reasonable control including power outage or telecommunication disruption or act of war or terrorist attack.

## **7 Insolvency**

If the Customer becomes bankrupt, goes into receivership, liquidation or enters into an arrangement with creditors the Company may cancel the contract forthwith without incurring liability and claim a proportion of the amount due hereunder proportionate to the work done up to the date of cancellation plus interest thereon at the rate charged by the Company on overdue accounts until such proportion is paid.

## **8 No Prior Agreements**

The Customer acknowledges that there are no representations or agreements on the part of the Company, its servants or agents written or otherwise prior to or collateral with any contract by which any warranty or responsibility not expressed here or in the Company's quotation may be imputed to the Company or its servants or agents.

## **9 Indemnity**

The Customer shall indemnify save harmless and defend the Company against any claims by third parties for:

- (a) Loss, including loss of profits;
  - (b) Damage;
  - (c) Injury;
  - (d) Consequential loss; and
  - (e) Patent, trademark, design or copyright infringement, directly or indirectly arising out of the design, workmanship, material, construction, testing, storage or use of the goods or any other deficiency therein.
- Should the Company provide the services of any employee or agent of the Company for the purpose of driving, testing, operating, adjusting or otherwise handling the goods the Customer shall indemnify the Company from and against all claims and demands whatsoever for any loss or damage which third parties may suffer as the result of any act or omission negligent or otherwise on the part of such employee or agent and the Customer shall not have any claim against the Company for any loss or damage arising from such act or omission.

## **10 Indirect Loss**

Except as set forth in the agreement the Company shall be under no liability whatsoever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Company of this agreement.

## **11 Local Laws**

It shall be entirely the responsibility of the Customer to ensure that the goods and the use thereof comply with the laws, regulations and codes of a particular country or local authority and with the requirements of the Customer.

## **12 Disclaimer**

The Customer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Company and the Customer acknowledges that he buys the goods relying solely upon his own skill and judgement and that the Company shall not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the Manufacturer which warranty shall be personal to the Customer and shall not be transferable to any subsequent Customer.

## **13 Governing Law**

This Agreement and all contracts of supply entered into between the Customer and the Company shall be governed by the law of New Zealand whose Courts shall have exclusive jurisdiction to hear and determine any dispute.

## **14 Prices**

Prices quoted are based on information available as to the circumstances prevailing at the time of quotation and may be adjusted in accordance with actual circumstances becoming apparent in the fulfilment of the order. Quotations as to the time required for any work shall be based on the circumstances known to us at the time of the Quotation. The Customer shall pay in addition to any quoted price, all increases in cost to the Company in respect of labour, materials, specification changes, transport, tax, rates of exchange or otherwise after the date of the quotation. Prices are subject to change without notice unless goods are supplied pursuant to a current quotation. All prices are Quoted FOB Wellington New Zealand. Freight quotations can be provided.

## **15 Acceptance of Quotation**

The Company's quotation shall be deemed to be withdrawn unless accepted by the Customer within a period of 30 days from the date of issue, unless otherwise agreed.

## **16 GST**

Unless otherwise agreed in writing, prices are quoted exclusive of GST.

## **17 Payment**

Terms of payment are as provided in writing to the Customer by the Company on the invoice accompanying the goods supplied. Time of payment is of the essence of the contract and should the Customer fail to pay when due, the Company may, in addition to its other remedies, cancel or suspend the contract as to any remaining deliveries and claim for any loss. In default the Customer will pay interest at 2.5% per month on any account unpaid and all the Company's legal costs of recovery of the debt and such interest shall accrue before and after judgment. All costs associated with the collection of overdue accounts are payable by the Customer. The Company reserves the right to close any monthly account or amend the terms of such account at any time.

## **18 Allocation of Payments Received**

Where, at any time, there is an amount owing by the Customer under any two or more contracts, the Company may apply a payment made by the Customer in such manner (including in such order and to any amounts owing to the Company, including under another contract) as the Company thinks fit and in the Company's sole discretion (despite any direction to the contrary and whether before or after any default by the Customer). The security interest provided for by these Terms and created by this Agreement also secures the amount owing under each contract and this Agreement shall be construed accordingly.

## **19 Payment by Other than Cash**

Receipt by the Company of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured,

## **20 Delivery**

- (a) The Company will deliver or arrange for the delivery of the goods ordered by the Customer to the address supplied by the customer in the order form or to such other address as is subsequently agreed between the Company and the Customer if requested.
- (b) Where the Company arranges for delivery by courier, the delivery of the goods is

deemed to be completed upon loading onto the courier.

(c) Where there are missing goods or goods damaged during delivery the Customer must notify the Company (and the carrier) immediately.

(d) Quoted delivery times are estimated only. The company will make every effort to ensure delivery of the goods is on time but is not liable for any loss or damage arising in any way from delay in delivery and in the event of any delay in delivery, this does not entitle the customer to cancel the contract. Any delays, which in the opinion of the company, are beyond the Company's control, entitle the Company to cancel the contract without liability or postpone delivery and the Customer shall accept such postponed delivery.

(e) The Company reserves the right to cancel delivery of the goods or such instalments thereof without prejudice to its rights to recover all sums owing to it in respect of deliveries already made.

(f) Unless otherwise agreed in writing, the Customer will pay all delivery costs.

## **21 Damage during Installation**

Where the Company undertakes installation or assembly the Customer shall be responsible for all loss, damage or destruction occasioned by fire, earthquake, water, effect of weather, pilfering, and any other causes whatsoever, whether the goods be wholly or only partly installed or be lying not assembled wherever the same be and despite anything contained in these conditions or the quotation contained with regard to the terms of payment.

## **22 Exclusion of Liability - subsequent loss**

Where the Company designs and manufactures equipment based on specifications supplied by the Customer or where the Company undertakes installation or assembly of equipment for the Customer, then subject to any warranty given in writing to the Customer by the Company, the Company shall not be liable for any loss, damage (including spoilage), injury or consequential loss either directly or indirectly caused by a failure of the equipment or defect in installation or assembly. The Customer shall make no claim against the Company and will indemnify save harmless and defend the Company against any claims by third parties for any such loss, damage (including spoilage), injury or consequential loss.

## **24 No Infringement of Intellectual Property Rights**

The Customer warrants that it will take steps to ensure that designs, instructions, marks or copyright information supplied to the Company will, if used, not cause the Company to infringe the patent, registered design, trademark or copyright or any person.

## **25 Testing of Goods**

Where the Company agrees to perform special tests on the goods at the request of the Customer, the cost of such special tests shall be payable by the Customer in addition to the price quoted.

## **26 Warranty**

(a) The warranty accompanying the goods shall be as provided in writing to the Customer by the Company on the invoice or quote supplied to the Customer and, in default of any such written warranty, the company's liability shall be limited to the replacement (when requested within 3 months of the date of supply) of faulty components only. The company agrees to pass on any applicable third party for the benefit of the Customer; and

(b) No warranties shall be applied in respect of any parts or components not actually manufactured by the Company; and

(c) The Company's warranty does not extend to wear and tear, defects resulting from accident, negligence, or misuse and shall extend to replacement materials and labour but not to transport to and from the Company's premises, damage to other equipment or plant, or any other losses, loss of profits, damages or injuries, or consequential loss, and

(d) The Company's liability in contract and tort or otherwise shall in no case exceed the Contract price.

## 27 Inspection and Returns

The Customer agrees to inspect the goods and verify all services within seven days of receipt. If no notice to the contrary has, within 14 days of delivery, been communicated to the company, the Customer is deemed to have accepted the goods or services as received. The Company will, at the company's option, issue a credit note for the goods or will repair or replace the goods where disclosed as faulty on such inspection following delivery and when the goods are authorised by the Company to be returned to the company as faulty.

## 28 Queries/Disputes

The Company will not consider any job or account queries which are not raised within 1 month from the date of invoice.

## 29 Privacy

In compliance with the Privacy Act 1993, the Customer authorises the Company to obtain information about the Customer from the Customer or any third party in the course of but not limited to the Company's credit enquiries. The Customer further authorises the Company to furnish to **any** third party, details of this application and any subsequent dealings that the Customer may have with us as a result of this application being actioned by us.

## 30 Security Interest

(a) Each contract for the supply of goods entered into between the Customer and the Company creates, in favour of the Company, a security interest in the goods which are the subject of the contract and such security interest secures the payment by the Customer to the Company of all amounts the Customer may owe the Company from time to time and at any time, including future advances.

(b) The Customer authorises the Company to take possession of the collateral if the Company from time to time deems it necessary to do so to perfect or re-perfect the Company's security interest in the collateral. For the purposes of this clause, possession includes but is not limited to the meaning ascribed to it in section 18 of the PPSA.

(c) The Customer agrees that it will not do any thing or allow any act to be done, which would have the effect of allowing the creation of a lien over any or all of the collateral that is the subject of the Company's security interest.

(d) The Customer agrees to indemnify the Company, upon demand from the Company, for all costs and expenses (including legal fees) incurred by the Company as a result of the Customer defaulting under this Agreement and in complying with any demand made under section 162 of the PPSA.

(e) On the request of the Company, the Customer shall promptly do all things necessary and provide all information required by the Company to enable the Company to perfect and maintain the perfection of any security interest granted to the Company by the Customer (including registration of a financing statement over the goods or the proceeds thereof).

(f) The Customer shall promptly notify the Company of any changes to its personal details as supplied on the credit application form. Where the Customer proposes to change its name, it shall notify the Company accordingly within five days of the change taking effect.

(g) The Customer shall, within five working days of receiving a written request from the Company, supply the Company with copies of all security interests registered over the Customer's personal property and the Customer hereby authorises the Company, as its duly appointed agent, to request information from any secured party relating to any security interest to which the Customer is Debtor.

### **31 Security Interest where goods become Accessions etc**

The Company's interest in the goods continues if the goods are processed, included or dealt with in any way causing them to become accessions, processed or commingled goods (as defined in the PPSA). The security interest in the original goods will continue in the whole in which they are included and the Customer agrees that it will not grant to any other person a security interest in either the goods or in the whole.

### **32 Verification Statement**

The Customer waives its right to receive a copy of the Verification Statement in respect of any financing statement relating to the security interest granted to the Company by the Customer.

### **33 Receiver**

In addition to any other right, power or remedy of the Company expressed or implied in this agreement, at any time after the Customer has defaulted in its obligations, the Company may appoint in writing any person or persons to be a receiver of all or any of the collateral and the receiver shall have the powers set out in the Receiverships Act 1993.

### **34 Trustee Liability**

Where the Customer is a trust, each trustee of the trust is bound by this Agreement and the trustees' liability shall not be limited to the assets of the trust unless the trustee is an independent trustee (being a trustee who has no right to or interest in any of the assets of the trust either directly or indirectly except in the trustee's capacity as trustee of that trust). However, this limitation of liability for independent trustees shall not affect the liability of the independent trustee that personally guarantees the Customer's obligations under this Agreement.

### **35 Consumer Guarantees Act 1993**

Where the Customer is not a consumer as defined in the Consumer Guarantees Act 1993 ("the CGA"), the CGA will not apply to the supply of the goods from the Company to the Customer.

### **36 Contracting out of the PPSA**

The parties contract out of sections 114(1)(a), 117(1)(c), 133 and 134 of the PPSA. The parties contract out of the Buyer's rights in sections 116, 119, 120(2), 121, 125, 129, 131, and 132 of the PPSA.