

TABS LIMITED

TERMS AND CONDITIONS OF TRADE

1. **Definitions and interpretation**
 - 1.1 In this Agreement:

Agreement means these terms and conditions, together with any Purchase Orders made under them.

Business Day means any day other than a Saturday, a Sunday or a public holiday on which banks are open for business in Auckland;

Client includes the issuer of a Purchase Order and any person who receives Goods and/or Services from TABS;

Confidential Information means all information, in any form, relating to the business or prospective business, current or projected plans or internal affairs of a party, except to the extent any information:

 - (a) is or shall (otherwise than by breach of this Agreement) be in the public domain; or
 - (b) is in the possession of the recipient party other than pursuant to disclosure from the other party; or
 - (c) subsequently comes lawfully into the possession of the recipient party from a third party without the imposition of any duty of confidentiality by such third party;

Employees means TABS's employees, agents and subcontractors;

Force Majeure Event means any event or circumstances beyond the control of any party, including:

 - (a) fire, flood, explosion, earthquake, storm or other natural disaster; or
 - (b) civil commotion, hostilities (whether war is declared or not), sabotage, terrorist attack; or
 - (c) the acts or decisions of any governmental, public or judicial authority (otherwise than pursuant to the act or default of the party concerned) or the imposition of any independent government sanction, embargo or similar action made after the date of this agreement.

Goods and/or Services means any goods and/or services provided by TABS to the Client;

Insolvency Event means in relation to a party:

 - (d) that party becomes unable to pay its debts as they fall due; or
 - (e) a statutory demand is served, or a liquidator, receiver or manager (or any similar person) is appointed or any insolvency procedure under the Companies Act 1993 is instituted or occurs; or
 - (f) any analogous demand, appointment or procedure is instituted or occurs in relation to a party elsewhere than in New Zealand;

Intellectual Property Rights means any current and future intellectual property rights belonging to a party, including:

 - (a) copyrights, trade marks, trade names, domain names, rights in logos and get-up, inventions, confidential information, trade secrets, drawings, specifications, designs, plans, samples and know-how including commercial know-how, design rights, patents, utility models, semiconductor topographies, all rights of whatsoever nature in computer software and data, rights in databases, privacy rights; and
 - (b) all intangible rights and privileges of a nature similar, analogous or allied to any of the above;

in every case in any part of the world and whether or not registered, including in relation to the above, all granted registrations and all applications for registration, all renewals, reversions or extensions, the right to sue for damages for past infringement and all forms of protection of a similar nature which may subsist anywhere in the world;

Location(s) means the location where the Goods are to be delivered, or the Services are to be performed (or both), as advised to TABS by the Client in writing;

Price means the price(s) at which TABS shall sell the Goods and/or Services to Client;

Purchase Order means a written order to purchase Goods and/or Services;

TABS means TABS Limited (NZ company no. 652905) having its registered office at 1st Floor, Amare Safety Building, 38a Allens Road, East Tamaki, Auckland, New Zealand.
- 1.2 In this Agreement the meaning of general words is not limited by the specific examples introduced by "including", "for example" or similar expressions.
- 1.3 If there is any conflict between these terms and conditions and any other part of this Agreement, these terms and conditions shall take precedence.
2. **Provision of Goods and Services**
 - 2.1 This Agreement shall apply to the provision of all Goods and Services by TABS to the Client. By accepting any Goods and/or Services from TABS the Client agrees to be bound by these terms and conditions.
 - 2.2 TABS shall ensure the Goods conform to any specifications provided at the time of delivery and shall perform the Services with reasonable skill and care.
 - 2.3 Support services are provided by TABS at its prevailing hourly rate, payable per half hour (or part thereof). On site support will incur a call-out fee.
3. **Quotes and Purchase Orders**
 - 3.1 If the Client requires a quote from TABS, the Client must provide a scoping document and TABS's quote will only cover items expressly specified in the scoping document.
 - 3.2 Where Client provides TABS with a Purchase Order for Goods and/or Services, and TABS accepts that Purchase Order in writing, Client shall be obliged to pay for, and TABS shall be obliged to provide, the Goods and Services the subject of the Purchase Order, upon the terms of the Purchase Order and otherwise in accordance with this Agreement.
 - 3.3 Unless otherwise required by TABS, a Purchase Order will contain the Client's name, purchase order number and an address for delivery.
4. **Goods delivery**
 - 4.1 Unless otherwise specified Goods will be delivered to the Location(s) between 9am and 5pm on Business Days. Goods ordered by Client are at TABS's risk until delivered to the Client. Title in the Goods passes to Client at the time Client pays for the Goods in full.
 - 4.2 Delivery of Goods is subject to the manufacturer's lead times unless otherwise agreed in writing by TABS. Standard lead times are, for Hardware, 12 Business Days from receipt of

	Purchase Order and for Software, 5 Business Days from receipt of Purchase Order.	9.2	Except as expressly stated in this clause 9 TABS makes no warranty, express or otherwise, in respect of the provision of the Goods and Services or otherwise in respect of any matter related to this Agreement.
5.	Intellectual Property Rights	10.	Confidentiality
5.1	Each party acknowledges that nothing in this Agreement entitles it to use any trade mark, logos or designations of the other party. Each party acknowledges that it does not acquire any rights, title or interest in or to any Intellectual Property Rights owned by or licensed to the other party.	10.1	Save as is otherwise required by law or any regulatory authority, each party undertakes to the other that it shall keep secret and shall not without the prior written consent of the other party disclose any Confidential Information belonging to the other party.
6.	Termination	11.	Liability
6.1	A party may terminate this Agreement immediately by giving written notice to the other:	11.1	Neither party shall be liable to the other by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the terms of this Agreement, for any indirect or consequential loss or damage, any loss of profit (whether direct or indirect) or business or loss of future business or otherwise, costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of that party, its employees or agents or otherwise) which arise out of or in connection with this Agreement.
	(a) if the other party commits a material breach of its obligations under this Agreement and, in the case of a breach which is capable of remedy, fails to remedy it after being given 14 days written notice specifying the breach and requiring it to be remedied; or	11.2	TABS's aggregate liability to Client whether for negligence, breach of contract, misrepresentation or otherwise shall in no circumstances exceed the lesser of \$100.00 and the value of the relevant Goods and/or Services which give rise to such liability in respect of any occurrence or series of occurrences, whichever is the lesser.
	(b) if the other party becomes the subject of an Insolvency Event.		
	(c) in accordance with clause 13 (Force Majeure).	12.	Non-waiver
7.	Consequences of Termination		Any failure or delay in enforcing an obligation or exercising a right, under this Agreement, does not amount to a waiver of that obligation or right. The waiver of a breach of a term of this Agreement does not amount to a waiver of any other term. A waiver of a breach of any of the terms of this Agreement shall not prevent a party from subsequently requiring compliance with the waived obligation.
7.1	Upon termination or expiry of this Agreement:	13.	Force majeure
	(a) each party shall immediately return all Confidential Information belonging to the other, or if instructed shall arrange for its immediate destruction;		Neither party is liable for any failure to perform or for any delay in performing its obligations under this Agreement if that failure or delay is due to a Force Majeure Event. If that failure or delay exceeds 30 days, the party not affected by the Force Majeure Event may terminate this Agreement with immediate effect by giving written notice to the other.
	(b) Client shall promptly pay TABS for the Goods or Services properly provided by TABS up to the date of termination.	14.	No partnership
7.2	Termination or expiry of this Agreement shall not affect the rights or liabilities of either party accrued prior to and including the date of termination or expiry and/or any terms intended expressly or by implication to survive termination or expiry.		TABS shall be an independent contractor of Client and nothing in this Agreement shall be construed as to deem TABS or its sub contractors or Employees to be an employee, servant, partner or joint venturer of Client.
8.	Price and payment	15.	Entire agreement
8.1	The Price is stated exclusive of any applicable New Zealand GST, but inclusive of any other taxes including sales or value-added tax. TABS shall provide a valid tax invoice(s) for the Price. Client will pay TABS's invoice within 14 days of the date of invoice. All payments will be paid in New Zealand dollars (or in such other currency as Client may request from time to time).		This Agreement constitutes the whole agreement and understanding between the parties with respect to the subject matter of this Agreement and supersedes all prior agreements, negotiation and discussions between the parties relating to the subject matter of this Agreement.
8.2	The Client fully indemnifies TABS against all costs, expenses and other losses (including all collection costs and legal costs on a solicitor/client basis) incurred by TABS arising from the Client failing to pay any invoice when due.	16.	Rights of third parties
8.3	The Client grants TABS a security interest in all Goods to secure the obligation of the Client to pay for those Goods. The Client agrees to allow TABS to register and perfect its security interest and agrees:		This Agreement shall be binding upon the legal successors of the parties. A person who is not a party to this Agreement has no right under the Contracts (Privity) Act 1982 to enforce any term of this Agreement. This clause does not affect any right or remedy of a third party which exists or is available apart from that Act.
	(a) not to change its name without notifying TABS at least 10 business days prior to doing so;	17.	Governing law and jurisdiction
	(b) to indemnify TABS for any costs incurred by TABS under this clause;	17.1	This Agreement is governed by and is to be construed in accordance with New Zealand law. The parties irrevocably agree that the courts of New Zealand shall have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Agreement.
	(c) to waive the right to receive a copy of any verification statement under s148 of the Personal Property Securities Act 1999 (PPSA); and		
	(d) that it has no rights under section 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125, 129, 131, 133 and 134 of the PPSA.		
9.	Warranties		
9.1	In respect of Goods, TABS shall use its best endeavours to ensure the benefit of the manufacturer's warranty is passed through to the Client.		