

1.00 TERMS OF BUSINESS

- 1.01 On acceptance Lexel Systems Ltd, or its divisions (hereon referred to as the "Company") of the foregoing application submitted by the Customer both Customer and Company acknowledge that goods and services provided by the Company to the Customer shall be provided on the following terms and conditions. In addition to any other form of acceptance of this application, acceptance shall be deemed to have occurred in any event upon delivery by the Company to the Customer of any goods and services requested by the Customer.

2.00 COUNTERPARTS AND FACSIMILE SIGNATURE

- 2.01 This agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute the same instruments. The transmission by facsimile by a party to the other party of a signed counterpart copy of this agreement, or facsimile of this agreement, shall be deemed proof of signature of the original and the signed facsimile so transmitted shall be deemed an original.

3.00 GENERAL

- 3.01 If a particular provision of this agreement is terminated or held by a Court of law or administrative body of competent jurisdiction to be illegal, void, or unenforceable, such determination shall not impair the enforceability of the remaining parts of this agreement which shall remain in force.
- 3.02 Unless otherwise stated, the Company's quotes shall exclude GST, courier fees, installation fees, support fees and are subject to change without notice.
- 3.03 The parties acknowledge that this contract constitutes a whole of the agreement between the parties and the Customer acknowledges that it has not relied upon any representation or assurances by the Company other than those contained herein.
- 3.04 Each party agrees to execute and deliver any documents, including transfers of title, and to do all things as may reasonably be required by the other party to obtain the full benefit of this agreement according its true intent.
- 3.05 Customer Terms & Conditions of Business ("TCOB") do not supersede this Agreement unless the TCOB are specifically signed by a member of the Company Management and Company Management specifically acknowledge this Agreement no longer applies. For clarity, but not an exhaustive list, the following methods of forwarding TCOB can not be interpreted as specific agreement to TCOB:
- Fulfilling an order where the Customer Purchase Order contains TCOB, or
 - Attaching TCOB to payment,
 - Letter to Company showing TCOB, or
 - Including TCOB as an attachment to, or in the body of an email, or
 - Referring the Company to TCOB in any of the above forms of communication.

4.00 RETURNS

- 4.01 Any returns of product supplied will be subject to the returns policy of the Manufacturer or importer of the product. The Company is not able to enhance the terms available.
- 4.02 If the Company agrees to accept the return of goods (other than defective goods), it shall be entitled to charge a restocking fee equal to 30% of the invoiced price of the goods returned.

5.00 CONSUMER GUARANTEES ACT ("CGA")

- 5.01 It is a condition of sale that the Consumer Guarantees Act 1993 will not apply to any goods acquired for business purposes. The Customer acknowledges that all the Company's software, services and products under this agreement are provided for business purposes and agrees that the Consumer Guarantees Act does not apply to their supply by the Company or acquisition by the Customer under this agreement.
- 5.02 Where the Customer is providing the Company's software, services or products (as applicable) to:
- (a) A consumer acquiring them for business purposes (as that term is defined in the Consumer Guarantees Act, 1993 ("Business Purpose"); or
 - (b) A person who may, whether directly or indirectly, on-sell the Company's software, services or products to a consumer acquiring them for Business Purposes;
- It must be a term of the Customer contract with that person that either the Consumer Guarantees Act, 1993 ("CGA") does not apply in respect of the Company's software, services or products (as applicable) or, alternatively, that person will ensure that an agreement is entered into with the end consumer of the Company's software, services or products (as applicable) to the effect that the CGA does not apply in respect of such software, services or products.
- 5.03 Where the Customer does not comply with the provisions of this clause it hereby agrees to indemnify the Company against any loss the Company may suffer in consequence of such breach including all solicitor client legal costs and disbursements in defending any action which may be brought against the Company.
- 5.04 Nothing in these terms is intended to have the effect of contracting out of the provisions of the CGA except to the extent permitted by that Act. Where it is mandatory that the CGA applies, these terms are modified to the extent which is necessary to give effect to that intention.

6.00 WARRANTIES

- 6.01 No warranty or condition will be applied against the Company by any statute, at common law or otherwise and no representation, expressed condition, warranty or variation of these terms shall be binding on the Company unless it is in writing and signed for or on behalf of the Company.
- 6.02 The Customer is not entitled to rely on, and the Company make no warranties in respect of:
- (a) The continuous availability of communications facilities to the Customer (even where required for particular services or support): or
 - (b) Problem resolution: or
 - (c) Any support or labour being uninterrupted or error-free

- 6.03 The Customer agrees to take adequate precautions against damage to its operation that could be caused by interruption or errors, including making appropriate data backups, the Company cannot be held responsible for any loss of the Customers data, and is not liable for any direct, indirect, consequential, incidental, special, punitive or other damages whatsoever (including without limitation, damages for loss of business profits, business interruption or loss of business information), even if Company has been advised of the possibility of such damages.
- 6.04 The Customer shall indemnify the Company and its affiliates and hold the Company and its affiliates free and harmless from any costs, expenses, loss or damage incurred by the Company or its affiliates as a result of the Customer or any purchase from the Customer failing to comply with obligations contained in this section.
- 6.05 The Customer agrees that vendor (manufacturer) warranties do not include restoration of the system to the state prior to failure, only to the configuration and status of when the vendor shipped the product/s from the factory. Any additional work required by the Company to reinstate the system to its previous state (pre-failure) will be charged separately, and the Customer agrees to pay for this.
- 6.06 The Customer shall indemnify the Company and its affiliates and hold the Company and its affiliates free and harmless from any costs, expenses, loss or damage incurred by the Company or its affiliates as a result of the Customer on selling or reselling products or services of the Company. If the Customer on sells or resells products or services of the Company, the Customer will take adequate precautions to ensure that the Company is protected and excluded from any possible liabilities or costs, and shall reimburse the Company if such events occur.

7.00 DELIVERY AND RISK

- 7.01 The Company will endeavor to arrange for supply of goods as quickly as possible, the costs of delivery to be by arrangement between the parties.
- 7.02 The goods will be at the Customers risk from delivery.
- 7.03 All claims for errors or short delivery must be made within seven days of delivery.
- 7.04 If the Company is organising delivery it is entitled to deliver the goods between 8.00am and 5.00pm on any working day. If the Customer or an agent of the Customer is not present at the delivery site, then the goods may be left and deemed to be delivered and at the Customers risk from date of delivery.
- 7.05 When Customer equipment is stored on Company premises, whether for the purpose of storage only or maintenance of the equipment, the equipment is stored at the Customers risk.

8.00 INTELLECTUAL PROPERTY

- 8.01 The Customer acknowledges that the Company (or its supplier) is the sole owner of all Intellectual Property rights relating to or arising out of the goods and services (the “Intellectual Property”) and that the Customer must not copy, modify, reproduce, reverse, assemble or reverse compile or permit any other person to do the same to or in respect of the Intellectual Property, and must not make any modification to the Intellectual Property or the packaging except as authorized by these terms.
- 8.02 The Customer acknowledges that the Company will own any Intellectual Property rights arising out of the performance of any contract subject to these terms.

9.00 RESTRAINT OF TRADE

- 9.01 The Customer agrees that they will not during the term of this agreement, nor for a period of six (6) months thereafter, directly or indirectly approach, offer, contract or otherwise deal with the Company’s employees, agents or subcontractors in respect of substitutions of the Company’s services, other than with the prior written consent of the Company.

10.00 CONFIDENTIAL INFORMATION

- 10.01 Confidential information means any information relating to the Company’s business or the technology or design of any good or item associated with any good or service, any information relating to these terms or their subject matter, any information gained by the Customer through its dealing with the Company that the Customer should reasonably assume is confidential, and any information notified by the Company to be confidential.
- 10.02 The Customer acknowledges the confidential nature of and the Company’s intellectual property rights in, the confidential information and will not use, copy or disclose any confidential information, and the Company will not disclose any confidential information that it receives from the Customer other than:
 - (a) As required by the New Zealand Stock Exchange Listing Rules;
 - (b) In good faith and in proper furtherance of the objects of these terms; and
 - (c) To its legal advisors; or
 - (d) Information already in the public domain

11.00 LIMITATION OF LIABILITY

- 11.01 Subject to and to the extent permitted by applicable law, neither the Company nor anyone else who has been involved in the creation, production, or delivery of the products or services that are under this agreement shall be liable for any direct, indirect, consequential or incidental damages (including damages for loss of business profits, business interruption, loss of business information, and the like) arising out of the use or inability to use those products or products or services, or provision of, or failure to provide, support, even if the Company has been advised of the possibility of such damages. The liability of the Company, to the extent that such limitation does not apply, shall in that case not exceed the sum of the invoice relating to goods or service the Customer is making a claim against, whether that liability arises for negligence, breach of warranty or otherwise.

12.00 ELECTRONIC COMMERCE

12.01 The Customer agrees to keep the personal Logon ID's and passwords to the Company's e-commerce offerings confidential to authorized individuals within the Customer. The Customer agrees not to disclose, or give access to the Company's e-commerce offerings, or any details of contracts to any parties outside of the Customer without written permission from the Company.

12.02 The Customer agrees to pay the Company for all items ordered by its staff or their e-commerce user ID's. The Company's e-commerce sites pricing, availability, and site details may change without notice. The Company will endeavor to ensure that all pricing, availability and site details are accurate, but will not be held responsible for any errors or consequential losses from relying on the site details.

13.00 ONGOING OBLIGATIONS

13.01 Where the Customer purchases software, or a service agreement, whether from the Company or from a Manufacturer or Vendor and that agreement contains an automatic renewal, it is the responsibility of the Customer to meet that obligation or cancel the agreement within the terms of any such agreement. This obligation survives the termination of these Terms of Business.

14.00 REFERENCES

14.01 The Customer agrees that Company may refer to the clients name in discussions with other clients. The client agrees that generic non proprietary information about the clients IT systems makeup may be discussed with other parties including suppliers and other Customers for the means of supporting the client and sharing information between Company Customers.

15.00 ELECTRONIC COMMUNICATION

15.01 The Customer agrees that the Company can email to the Customer and Staff (at work) promotional and informative emails from time to time.

16.00 TERMS

16.01 This agreement shall remain in force until terminated by other party by notice in writing. Termination of the agreement shall not prejudice the Company's accrued rights and remedies against the Customer.

17.00 ENTIRE AGREEMENT

17.01 This agreement constitutes the entire agreement between the parties; it supersedes and extinguishes all earlier negotiations, understandings and agreements, whether oral or written, between the parties relating to the sale and purchase of the goods.

18.00 PAYMENT

18.01 Unless otherwise agreed in writing by the Company, full payment for the goods supplied shall be due on the earlier of:

- (a) "Due Date" as per the terms of credit approved for the Customer, or
- (b) Immediately the Customer sells or other wise disposes of the goods, or
- (c) Immediately upon the commencement of any action or proceedings by or against the Customer, which in the opinion of the Company, might compromise the Customer's credit worthiness.

For the purposes of these terms, "Due Date" will be determined by the terms offered by the Company to the Customer as per the definitions below:

- COD Payment is due prior to delivery or at the time of delivery
- 7 Days Payment is due no later than seven days after the date of the invoice
- 30 Days Payment is due no later than thirty days after the date of the invoice
- 20th of month Payment is due no later than the 20th of the month, in the month following the month of invoice.

18.02 Payment for Products and Services shall be made in full without any deduction, whether by way of set-off, counterclaim, or any other equitable or legal claim on or the Due Date.

18.03 If the Customer fails to pay any amounts due under this agreement or the due date open Due Date then the Company may charge interest at the ANZ Bank New Zealand Limited commercial overdraft rate plus 8% per annum on the overdue amount, calculated from the date on which payment was due until the date payment is actually made by the Customer. The Customer acknowledges that charging of default interest under this clause does not constitute the granting of credit by the Company to the Customer.

18.04 The Company may refuse to supply any further goods or services and / or grant further extension of credit while any overdue amounts owing to the Company remain unpaid.

18.05 The Company may withdraw credit facilities at any time without notice.

18.06 If the Customer fails to make any payment or perform its obligations or is otherwise in breach of this agreement, the Customer shall be liable for and shall pay to the Company all and any expenses incurred by it in enforcing its rights under this agreement (including full solicitor Court costs and any collection commission) upon demand.

19.00 OWNERSHIP

19.01 Ownership of goods shall not pass to the Customer until the Customer has paid all that is owing to the Company. Until ownership has passed the Customer holds the goods on behalf of the Company under the following conditions:

The Company is permitted to enter onto the Customer's premises to inspect and/or repossess the goods.

The Company may repossess the goods at any time after;

- (a) the Due Date for payment of any of the goods; or
- (b) the commencement of the winding up of the Customer; or
- (c) the committing of an act of bankruptcy by the Customer; OR
- (d) any attempt by the Customer to enter into a debt compromise arrangement with the Customer's creditors.

If the Customer sells the goods to a third party then the Customer is accountable to the Company for all the proceeds derived from such a sale and shall hold such proceeds on trust for the Company in a separate bank account. In all such dealings the Customer shall be deemed to be trustee of all proceeds for the Company as beneficiary.

If the Customer manufactures, intermingles or deals with the goods in such a manner that they become an integral part of any other object then the Customer shall be deemed to do so as agent of the Company and ownership of the goods will remain with the Company as principal.

20.00 PERSONAL PROPERTY SECURITIES ACT ("PPSA")

20.01 Upon signing these terms the Customer acknowledges that:

- (a) These terms are a security agreement for the purpose of section 36 of the PPSA: and
- (b) A security interest is taken in all goods previously supplied by the Company to the Customer (if any) and all goods that will be supplied in the future by the Company to a Customer during the continuance of the parties relationships.

20.02 The Customer undertakes to:

- (a) Enter into a General Security Agreement (as approved by the Auckland District Law Society), and to sign any further documents and/or provide any further information which the Company may reasonably require to register a financing statement or financing charge statement on the Personal Property Securities Register;
- (b) Give the Company not less than 14 days prior written notice of any proposed change in the Customer's name and will use its best endeavors to ensure that a financing change statement is registered disclosing its new name; and
- (c) Immediately advise the Company of any material change in its business practices of selling the goods which would result in a change of the nature of proceeds derived from such sales.

20.03 Unless otherwise agreed to in writing by the Company, the Customer waives its rights to receive a verification statement in accordance with section 1.

21.00 GUARANTEE

21.01 In consideration of the Company approving this account application form and supplying goods to the Customer at the guarantors request, the guarantor:

- (a) Guarantees payment of all monies due and owing to the Company by the Customer from time to time and compliance by the Customer with the terms and conditions of this application.
- (b) Indemnifies the Company against any loss the Company may suffer should the Customers contract with the Company be lawfully disclaimed or abandoned by liquidator, receiver or other person.

The guarantor covenants with the Company that:

- (a) No release, delay or other indulgence given by the Company to the Customer whereby the guarantor would have been released had the guarantor been merely a surety, shall release prejudice or affect the liability of the guarantor as a guarantor or as indemnifier.
- (b) As between the guarantor and the Company the guarantor may for all purposes be treated as the Customer and the Company shall be under no obligation to take proceeding against the Customer before taking proceedings against the guarantor.
- (c) The guarantee is for the benefit and may be enforced by any person entitled for the time being to receive the benefit of the agreement in place of the Company
- (d) Should there be more than one guarantor their liability to the guarantee shall be joint and several.

The Guarantors acknowledge that they fully understand the extent and nature of their liability as set out in clause 7 hereof and further acknowledge that they are entitled to take independent legal advice in this respect but have declined to do so.