
Softlink Services Limited – Terms & Conditions of Trade

1. Definitions

- 1.1 **“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.
- 1.2 **“Softlink”** means Softlink Services Limited, its successors and assigns or any person acting on behalf of and with the authority of Softlink Services Limited
- 1.3 **“Client”** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting Softlink to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
(a) if there is more than one Client, is a reference to each Client jointly and severally; and
(b) if the Client is a partnership, it shall bind each partner jointly and severally; and
(c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
(d) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.4 **“Goods”** means all Goods (includes software, hardware or peripheral equipment) or Services (including consulting, installation, monitoring, repairs and maintenance) supplied by Softlink to the Client at the Client’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.5 **“Confidential Information”** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, **“Personal Information”** such as: name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.6 **“Cookies”** means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including personal information) specific to a particular client and website, and can be accessed either by the web server or the client’s computer. **If the Client does not wish to allow Cookies to operate in the background when using Softlink’s website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.7 **“Price”** means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Goods as agreed between Softlink and the Client in accordance with clause 6 below.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts Delivery of the Goods.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 These terms and conditions may be meant to be read in conjunction with Softlink’s Hire Form and where the context so permits, the terms ‘Goods’ or ‘Services’ shall include any supply of Equipment, as defined therein.
- 2.5 None of Softlink’s agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of Softlink in writing nor is Softlink bound by any such unauthorised statements.
- 2.6 Any advice, recommendations, information, assistance or service provided by Softlink in relation to Services provided is given in good faith, is based on information provided to Softlink, and Softlink’s own knowledge, and experience. Whilst it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Services, human error is possible under these circumstances, and Softlink shall make all effort to offer the best solution to the Client.
- 2.7 The Client accepts and acknowledges that copyright is retained by Softlink on all design work and other Services provided by Softlink including text, images, ideas, models, visuals and illustrations unless specifically released in writing and after all costs have been settled.
- 2.8 Softlink reserves the right to withdraw any Goods or Services from supply without notice, being effective immediately, however shall remain liable to supply any Goods or Services that has already been ordered.
- 2.9 The Client acknowledges and accepts that the supply of Goods and/or Services for accepted orders may be subject to availability and if, for any reason (including the practicality to supply the Goods and/or Services), Goods are not or cease to be available, Softlink reserves the right to substitute comparable Goods (or components of the Goods) and vary the Price as per clause 6.6. In all such cases Softlink will notify the Client in advance of any such substitution, and also reserves the right to place the Client’s order and/or Services on hold until such time as Softlink and the Client agree to such changes.
- 2.10 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. Errors and Omissions

- 3.1 The Client acknowledges and accepts that Softlink shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
(a) resulting from an inadvertent mistake made by Softlink in the formation and/or administration of this Contract; and/or
(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Softlink in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of Softlink; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

4. Change in Control

- 4.1 The Client shall give Softlink not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client’s details (including but not limited to, changes in the Client’s name, address and contact phone or fax number/s, change of trustees or business practice). The Client shall be liable for any loss incurred by Softlink as a result of the Client’s failure to comply with this clause.

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5. Authorised Representatives

- 5.1 Unless otherwise limited as per clause 5.2, the Client agrees that should the Client introduce any third party to Softlink as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Goods, Services, and/or to request any variation thereto, on the Client's behalf (such authority to continue until all requested Services have been delivered, or the Client otherwise notifies Softlink in writing that said person is no longer the Client's duly authorised representative).
- 5.2 In the event that the Client's duly authorised representative, as per clause 5.1, is to have only limited authority to act on the Client's behalf then the Client must specifically and clearly advise Softlink in writing of the parameters of the limited authority granted to their representative.
- 5.3 The Client specifically acknowledges and accepts that they will be solely liable to Softlink for all additional costs incurred by Softlink (including Softlink's profit margin) in providing any Goods, Services, or variation/s thereto, requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 5.2 (if any)).

6. Price and Payment

- 6.1 All pricing is stated in New Zealand currency.
- 6.2 The Client acknowledges that the supply of Goods on credit shall not take effect until the Client has completed a credit application with Softlink and it has been approved with a credit limit established for the account.
- 6.3 In the event that the supply of Goods request exceeds the Client's credit limit and/or the account exceeds the payment terms, Softlink reserves the right to refuse delivery and/or request an alternative payment method or arrangement.
- 6.4 At Softlink's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by Softlink to the Client; or
 - (b) Softlink's quoted price (subject to clause 6.6) which will be valid for the period stated in the quotation or otherwise for a period of seven (7) days.
- 6.5 A copy of the written quotation is to be signed and dated by the Client to indicate acceptance and should be returned to Softlink. As an alternative, the Client may send an official order for the Services via email in reply to the quotation which will imply the Client's acceptance of Softlink's terms and conditions. The Client accepts that no work will be commenced until acceptance has been supplied to Softlink as per this clause.
- 6.6 *Additional and/or Varied Services:*
- (a) Softlink agrees that there will be no charge in the preparation of the initial quotation (however any site visits may be chargeable), which may include Client discussions, performing analysis and research, etc. However, in some instances the aforementioned services may be charged to the Client additionally (at Softlink's sole discretion).
 - (b) All work carried out whether experimentally or otherwise at the Client's request will be charged to the Client.
 - (c) Where the performance of any contract with the Client requires Softlink to obtain products and/or services from a third party, the Contract between Softlink and the Client shall incorporate, and shall be subject to, the conditions of supply of such products and/or services to Softlink, and the Client shall be liable for the cost in full including Softlink's margin of such products and/or services.
 - (d) Softlink reserves the right to amend the Price where there is any variation to the accepted plan of scheduled Services, or instructions/specifications, which will be charged for on the basis of Softlink's standard hourly rates and will be shown as variations on the invoice.
 - (e) Any variation due to a result of any increase to Softlink in the cost of materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) and labour) will be charged for on the basis of Softlink's quotation.
- 6.7 Variations will be charged for on the basis of Softlink's quotation, and will be detailed in writing, and shown as variations on Softlink's invoice. The Client shall be required to respond to any variation submitted by Softlink within ten (10) working days. Failure to do so will entitle Softlink to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.8 At Softlink's sole discretion a non-refundable deposit may be required. For quotations, orders or other document that indicates the Price shall be greater than ten thousand dollars (\$10,000), then a deposit amount equal to thirty percent (30%) of the Price shall become due and payable upon acceptance of the quotation or order.
- 6.9 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by Softlink, which may be:
- (a) on completion of the Services;
 - (b) on Delivery of the Goods;
 - (c) for certain approved Clients, 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;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Softlink.
- 6.10 Payment may be made by cheque, bank cheque, electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Client and Softlink.
- 6.11 Softlink may in its discretion allocate any payment received from the Client towards any invoice that Softlink determines and may do so at the time of receipt or at any time afterwards. On any default by the Client Softlink may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Softlink, payment will be deemed to be allocated in such manner as preserves the maximum value of Softlink's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 6.12 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 Softlink nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.13 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to Softlink an amount equal to any GST Softlink must pay for any supply by Softlink under this or any other contract for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

7. Delivery of Goods

- 7.1 Delivery (“**Delivery**”) of the Goods is taken to occur at the time that:
- (a) the Client or the Client’s nominated carrier takes possession of the Goods at Softlink’s address; or
 - (b) Softlink (or Softlink’s nominated carrier) delivers the Goods to the Client’s nominated address even if the Client is not present at the address.
- 7.2 At Softlink’s sole discretion the cost of Delivery is either included or is in addition to the Price and where Softlink is specifically requested to arrange insurance, then this cost shall also be included in the Delivery cost.
- 7.3 Softlink may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.4 Any time specified by Softlink for Delivery of the Goods/Services is an estimate only and Softlink will not be liable for any loss or damage incurred by the Client as a result of Delivery being late. However both parties agree that they shall make every endeavour to enable the Goods/Services to be delivered at the time and place as was arranged between both parties. In the event that Softlink is unable to supply the Goods/Services as agreed solely due to any action or inaction of the Client, then Softlink shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 7.5 Where materials or equipment are supplied by the Client, Softlink accepts no responsibility for imperfect work caused by defects in or unsuitability of such materials or equipment.
- 7.6 If the Client’s existing hardware or software has been previously been maintained by a third party, then Softlink may elect to inspect the Client’s systems at the Client’s expense to determine the operating condition of it. Softlink shall report to the Client any repairs or modifications which Softlink considers necessary. The Client shall then have such repairs and/or modifications carried out at its expense and commencement of an agreement may at Softlink’s discretion, be deferred until those repairs and/or modifications are done to Softlink’s satisfaction.

8. Backups

- 8.1 The Client is responsible for maintaining their own e-mail and other backups on their own systems, unless otherwise agreed; Softlink does not provide any sort of compensation for lost or incomplete data in the event that backups do not function properly.
- 8.2 Softlink will use their best endeavours to ensure complete and accurate backups of hosted data, but assume no responsibility for this duty. It is recommended by Softlink that the Client always keeps a backup of their website whenever possible. Softlink makes no guarantees about the availability of backups.
- 8.3 If the Client requires assistance in creating backups, please contact Softlink or view Softlink’s support pages. The Client’s hosting control panel provides a backup utility and the Client should periodically download a copy of their backed up files.

9. Risk and Limitation of Liability for Client Data

- 9.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 9.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, Softlink is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Softlink is sufficient evidence of Softlink’s rights to receive the insurance proceeds without the need for any person dealing with Softlink to make further enquiries.
- 9.3 The Client acknowledges and agrees that Softlink shall not be held responsible or liable for:
- (a) anything related to the Client’s website or any other Services provided;
 - (b) any supplied content breaching any Acts, legislation or regulations, unless due to the negligence of Softlink;
 - (c) any loss, corruption, or deletion of files or data (including, but not limited to software programmes) resulting from illegal hacking or Services provided by Softlink. Whilst Softlink will endeavour to restore the website, files or data (at the Client’s cost), it is the sole responsibility of the Client to back-up any data which they believe to be important, valuable, or irreplaceable prior to Softlink providing the Services. The Client accepts full responsibility for the Client’s software and data and Softlink is not required to advise or remind the Client of appropriate backup procedures (unless included as part of the Services); and
 - (d) any loss or damage to the Client’s software or hardware caused by any ‘updates’ provided for that software.
- 9.4 Softlink, its directors, agents or employees will not be liable in any way for any form of loss or damage of any nature whatsoever suffered, whether arising directly or indirectly, by the Client or any person related to or dealing with the Client out of, in connection with or reasonably incidental to the provision of the Services by Softlink to the Client.
- 9.5 The Services are provided on an “as is, as available” basis. Softlink specifically disclaims any other warranty, express or implied, including any warranty of merchantability or fitness for a particular purpose.
- 9.6 The Client understands that by placing information on a website, such information may be accessible to all internet users. Softlink does not (unless expressly requested by the Client) limit or restrict access to such information, nor protect such information from copyright infringement or other wrongful activity. The Client assumes full responsibility for their use of the Services, and it is the Client’s sole responsibility to evaluate the accuracy, completeness and usefulness or all opinions, advice, services, and other information, and the quality and merchantability of all Services provided by Softlink, or on the internet generally.
- 9.7 Furthermore, Softlink shall be under no liability whatsoever to the Client for any expenses, claims, costs (including but not limited to legal fees and commissions), damages suffered or incurred by Softlink, or indirect and/or consequential loss and/or expense (including loss of profit, the Client’s application software, operating system software or data files) suffered by the Client arising out of a breach by Softlink of these terms and conditions, caused by any failure by the Client to comply with their obligations under this Contract, or that arise from any claim relating to the Services by any person that the Client authorises to use the Services, or where due to server downtime or programming errors (alternatively Softlink’s liability shall be limited to damages which under no circumstances shall exceed the Price).
- 9.8 The Client acknowledges that Softlink is only responsible for parts that are replaced by Softlink and does not at any stage accept any liability in respect of previous services and/or goods supplied by any other third party that subsequently fail and found to be the source of the failure, the Client agrees to indemnify Softlink against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising.

10. Product Specifications

10.1 The Client acknowledges that all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in Softlink's or the manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the Contract, unless expressly stated as such in writing by Softlink.

11. Access

11.1 The Client shall ensure that Softlink has clear and free access to the Client's premises at all times to enable them to deliver, install or service the Goods. In addition the Client shall provide Softlink with any access codes, passwords or other information required in order to complete the Services whether delivered at the Client's premises or by remote access.

12. Title

12.1 Softlink and the Client agree that ownership of the Goods shall not pass until:

- (a) the Client has paid Softlink all amounts owing to Softlink; and
- (b) the Client has met all of its other obligations to Softlink.

12.2 Receipt by Softlink 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.

12.3 It is further agreed that until ownership of the Goods passes to the Client in accordance with clause 12.1:

- (a) the Client is only a bailee of the Goods and must return the Goods to Softlink on request;
- (b) the Client holds the benefit of the Client's insurance of the Goods on trust for Softlink and must pay to Softlink the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
- (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for Softlink and must pay or deliver the proceeds to Softlink on demand;
- (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Softlink and must sell, dispose of or return the resulting product to Softlink as it so directs;
- (e) the Client irrevocably authorises Softlink to enter any premises where Softlink believes the Goods are kept and recover possession of the Goods;
- (f) Softlink may recover possession of any Goods in transit whether or not Delivery has occurred;
- (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Softlink; and
- (h) Softlink may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

13. Personal Property Securities Act 1999 ("PPSA")

13.1 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 and/or collateral (account) – being a monetary obligation of the Client to Softlink for Services – that have previously been supplied and that will be supplied in the future by Softlink to the Client.

13.2 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 Softlink may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, Softlink 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, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of Softlink; and
- (d) immediately advise Softlink of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

13.3 Softlink and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

13.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.

13.5 Unless otherwise agreed to in writing by Softlink, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.

13.6 The Client shall unconditionally ratify any actions taken by Softlink under clauses 13.1 to 13.5.

13.7 Subject to any express provisions to the contrary (including those contained in this clause 13), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

14. Security and Charge

14.1 In consideration of Softlink agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

14.2 The Client indemnifies Softlink from and against all Softlink's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Softlink's rights under this clause.

14.3 The Client irrevocably appoints Softlink and each director of Softlink as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Client's behalf.

15. Defects

- 15.1 The Client shall inspect the Goods on Delivery and shall within thirty (30) days of Delivery (time being of the essence) notify Softlink of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Softlink 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 Softlink has agreed in writing that the Client is entitled to reject, Softlink's liability is limited to either (at Softlink's discretion) replacing the Goods or repairing the Goods.
- 15.2 Goods will not be accepted for return other than in accordance with 15.1 above, and provided that:
- (a) Softlink has agreed in writing to accept the return of the Goods; and
 - (b) the Goods are returned at the Client's cost within thirty (30) days of the Delivery date; and
 - (c) Softlink will not be liable for Goods which have not been stored or used in a proper manner; and
 - (d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 15.3 Softlink may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of fifteen percent (15%) of the value of the returned Goods plus any freight.
- 15.4 Subject to clause 15.1, non-stocklist items or Goods made to the Client's specifications are not acceptable for credit or return.

16. Warranty

- 16.1 Subject to the conditions of warranty set out in clause 16.2 Softlink warrants that if any defect in any workmanship of Softlink becomes apparent and is reported to Softlink within thirty (30) days of the date of Delivery (time being of the essence) then Softlink will either (at Softlink's sole discretion) replace or remedy the workmanship.
- 16.2 The conditions applicable to the warranty given by clause 16.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Client to properly maintain any Goods; or
 - (ii) failure on the part of the Client to follow any instructions or guidelines provided by Softlink; or
 - (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or act of God.
 - (b) the warranty shall cease and Softlink shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without Softlink's consent; and
 - (c) in respect of all claims Softlink shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.
- 16.3 For Goods (hardware) not manufactured by Softlink, the warranty shall be the current warranty provided by the manufacturer of the Goods. Softlink 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. Softlink will arrange to have faulty Goods repaired or replaced while the Goods are within the manufacturer's warranty period. The Client acknowledges and accepts that unless the warranty terms provide provision for on-site service then it is the Client's responsibility to return the faulty Goods to Softlink's premises. All risk of damage to or loss of any Goods during the return to Softlink remains with the Client. Furthermore, the Client may elect to collect the repaired or replaced Goods from Softlink's office or purchase Services to have the Goods installed at the Client's premises.
- 16.4 To make a warranty claim for any:
- (a) Goods supplied by Softlink then the Client must document the problem, stating the Goods make/model(s), serial number(s) and the nature of the fault(s). When Softlink has had a reasonable opportunity to investigate the claim and agrees the Goods are faulty the Client may elect to return the Goods to Softlink's office or purchase on-site services to have the Goods de-installed; and
 - (b) Services supplied by Softlink then the Client must document the problem. When Softlink has had a reasonable opportunity to investigate the claim and agrees the Services are faulty, then Softlink will discuss and agree with the Client on a mutually acceptable method of resolving the warranty claim as per this clause 16.

17. Consumer Guarantees Act 1993

- 17.1 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 ("CGA") do not apply to the supply of Goods by Softlink to the Client.

18. Intellectual Property and Confidentiality

- 18.1 Where Softlink has designed, drawn or developed Services for the Client during or after the term of the Contract, Softlink retains full intellectual property ownership of the Services, including the copyright in any designs and drawings and documents, and Softlink hereby grants to the Client an irrevocable, non-exclusive and non-transferable licence to use the Services solely in relation to the operation of the Client's own business, conditional upon the Client fulfilling their obligations under this Contract (including, but not limited to, the full payment of the Price).
- 18.2 Subject to the Copyright Act 1994 and the conditions therein, where Softlink or their sub-contractor has provided the Client with a licence for use on any design, copy, writing, drawing, image, illustration, idea or code created for the Client, the licence shall be for use by the Client on a one-time only basis and may not be modified, re-used, or re-distributed in any way or form without the express permission of Softlink and any of its relevant sub-contractors.
- 18.3 All work where there is a risk that another party makes a claim, should be registered by the Client with the appropriate authorities prior to publishing or first use or searches and legal advice sought as to its use. Softlink shall not be held responsible for any or all damages resulting from such claims.
- 18.4 The Client hereby authorises Softlink to utilise images of the Services created by Softlink in advertising, marketing, or competition material by Softlink including, but not limited to:

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- (a) the Client permitting Softlink to place a small credit on printed material, exhibition displays, advertisement and/or link to Softlink's own web site on the Client's Web Site, which shall usually be in the form of a small logo or line of text placed towards the bottom of the page; and
 - (b) allowing Softlink to place web sites and other designs, along with a link to the Client's Web Site on Softlink's own web site for demonstration purposes and to use any designs in Softlink's own publicity.
- 18.5 The Client shall indemnify Softlink against any claims by third parties for patent, trademark, design or copyright infringement, directly or indirectly arising out of the design, workmanship, material, construction, or use of the Services or any other deficiency therein. Where the Client has supplied drawings, sketches, files or logo's to Softlink, the Client warrants that the drawings, sketches, files or logo's do not breach any patent, trademark, design or copyright, and the Client agrees to indemnify Softlink against any action taken by a third party against Softlink.
- 18.6 Notwithstanding anything herein, the Intellectual Property Rights in Softlink's Services do not vest in the Client and there is no assignment of these Intellectual Property Rights to the Client. Softlink hereby grants to the Client an irrevocable, non-exclusive and non-transferable licence to use and reproduce the Services for the purposes of this Contract only, and solely for the operation of the Client's business however, the Client shall not use nor make copies of such Intellectual Property in connection with any work or business other than the work or business specified in writing to Softlink unless express approval is given in advance by Softlink. Such license shall terminate on default of payment or any other terms of this Contract by the Client.
- 18.7 Subject to clause 18.8, each party agrees to treat as confidential the other party's confidential information, and agree not to divulge it to any third party, without the other party's written consent.
- 18.8 Both parties agree to:
- (a) use the confidential information of the other party only to the extent required for the purpose it was provided;
 - (b) not copy or reproduce any of the confidential information of the other party in any way;
 - (c) only disclose the other party's confidential information to:
 - (i) employees and third-party providers who need access to the information and who have agreed to keep it confidential;
 - (ii) its legal advisers and insurance providers if those persons undertake to keep such information confidential; and
 - (iii) not disclose the other party's confidential information to any person not referred to in this clause except with the other party's prior written consent or if required by law, any stock exchange or any regulatory body.
- 18.9 Either party must promptly return or destroy all confidential information of the other party in its possession or control at the other party's request unless required by law to retain it.
- 18.10 Confidential information excludes information:
- (a) generally available in the public domain (without unauthorised disclosure under this Contract);
 - (b) received from a third party entitled to disclose it; and
 - (c) that is independently developed.
- 18.11 The obligations of this clause 18 shall survive termination or cancellation of this Contract.

19. Default and Consequences of Default

- 19.1 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 a half percent (2.5%) per calendar month (and at Softlink's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Client owes Softlink any money the Client shall indemnify Softlink from and against all costs and disbursements incurred by Softlink in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Softlink's collection agency costs, and bank dishonour fees).
- 19.3 Further to any other rights or remedies Softlink may have under this Contract, if a Client has made payment to Softlink, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Softlink under this clause 19 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 19.4 Without prejudice to Softlink's other remedies at law Softlink shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Softlink shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Softlink becomes overdue, or in Softlink's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by Softlink;
 - (c) 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
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

20. Cancellation

- 20.1 Without prejudice to any other remedies Softlink may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Softlink may suspend or terminate the supply of Goods to the Client. Softlink will not be liable to the Client for any loss or damage the Client suffers because Softlink has exercised its rights under this clause.
- 20.2 Softlink 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 Softlink shall repay to the Client any money paid by the Client for the Goods. Softlink shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.3 In the event that the Client cancels Delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by Softlink as a direct result of the cancellation (including, but not limited to, any loss of profits). Where the Client cancels an order within twenty-four (24) hours in writing, then where a deposit has been paid, the Client can request the deposit to be refunded.
- 20.4 Cancellation of orders for Goods made to the Client's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.

21. Privacy Policy

- 21.1 All emails, documents, images or other recorded information held or used by Softlink is Personal Information as defined and referred to in clause 21.3 and therefore considered confidential. Softlink acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information 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” under the EU Data Privacy Laws (including the General Data Protection Regulation “GDPR”) (collectively, “EU Data Privacy Laws”). Softlink acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client’s Personal Information, held by Softlink that may result in serious harm to the Client, Softlink will notify the Client in accordance with the Act and/or the GDPR. Any release of such personal information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 21.2 Notwithstanding clause 21.1, privacy limitations will extend to Softlink in respect of Cookies where the Client utilises Softlink’s website to make enquiries. Softlink 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 of Personal Information such as the Client’s:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to Softlink when Softlink sends an email to the Client, so Softlink may collect and review that information (“collectively Personal Information”)
- If the Client consents to Softlink’s use of Cookies on Softlink’s website and later wishes to withdraw that consent, the Client may manage and control Softlink’s privacy controls via the Client’s web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 21.3 The Client authorises Softlink or Softlink’s agent to:
- (a) access, collect, retain and use any information about the Client;
 - (i) (including, name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance 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 Client’s creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Client.
 - (b) disclose information about the Client, whether collected by Softlink from the Client directly or obtained by Softlink 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.
- 21.4 Where the Client is an individual the authorities under clause 21.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 21.5 The Client shall have the right to request (by e-mail) from Softlink, a copy of the Personal Information about the Client retained by Softlink and the right to request that Softlink correct any incorrect Personal Information.
- 21.6 Softlink will destroy Personal Information upon the Client’s request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 21.7 The Client can make a privacy complaint by contacting Softlink via e-mail. Softlink will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at <http://www.privacy.org.nz/comply/comptop.html>.

22. Service of Notices

- 22.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party’s last known email address.
- 22.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

23. Trusts

- 23.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust (“Trust”) then whether or not Softlink may have notice of the Trust, the Client covenants with Softlink as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Client will not without consent in writing of Softlink (Softlink will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

24. Force Majeure

- 24.1 Where Softlink or the Client is either wholly or in part is unable by reason of, an Act of God, strike, lockout, or other interference with work, war, blockade, disturbance, lightning, fire, earthquake, storm, national or global pandemic, flood, explosion, governmental restraint or embargo, unavailability or delay in availability of Goods, or transport, inability or delay in obtaining government approvals, or any other cause which is not reasonably within the control of the affected party (i.e. a force majeure event), to carry out any obligation under this Contract and that party:
- (a) gives the other party prompt notice of that force majeure with full particulars of the probable extent to which it will be unable to perform, or be delayed in performing its obligations under this Contract; and
 - (b) uses all possible diligence to remove that force majeure as soon as possible; then those obligations shall be suspended so far as it is affected by the force majeure event and during its continuance provided that:
 - (c) an obligation to pay money is never excused by force majeure; and
 - (d) the requirement that any force majeure event shall be removed with all possible diligence shall not require the settlement of strikes, lockouts, or other labour disputes, or claims or demands by any government, on terms contrary to the wishes of the party affected.

25. General

- 25.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising herein, shall be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties shall share equally the mediator's fees. Should mediation fail to resolve the dispute, the parties shall be free to pursue other dispute resolution avenues.
- 25.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. 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.
- 25.3 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 Auckland Courts of New Zealand.
- 25.4 Except to the extent permitted by law "CGA", Softlink 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 Softlink of these terms and conditions (alternatively Softlink's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 25.5 Softlink may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 25.6 The Client cannot licence or assign without the written approval of Softlink.
- 25.7 Softlink may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of Softlink's sub-contractors without the authority of Softlink.
- 25.8 The Client agrees that Softlink may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for Softlink to provide Goods to the Client.
- 25.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.
- 25.10 This Contract constitutes the entire agreement between the parties with respect of the subject matter and contains all of the representations, undertakings, warranties, covenants and agreements of the parties. This Contract supersedes all prior negotiations, contracts, arrangements, understandings and agreements with respect to such subject matter. There are no representations, undertakings, warranties, covenants or agreements between the parties express or implied except as contained in this Contract.