

## Terms and Conditions of Business

Softlink supplies all products ("Products") and services ("Services") on the following terms and conditions which shall apply, despite any indication to the contrary by any person acting on Softlink's behalf. No variation of these terms is effective unless in writing and signed on Softlink's behalf.

### 1 Interpretation

#### 1.1. Definitions

In all Softlink documents or agreements unless the context otherwise requires:

- **"Softlink"** means Softlink Services Limited, its successors and assigns or any person acting on behalf of and with the authority of Softlink Services Limited.
- **"Client"** means the person/s 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 part of a trust, shall be bound in their capacity as a trustee; and (c) includes the Client's executors, administrators, successors and permitted assigns.
- **"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).
- **"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.
- **"Business Day"** means Monday through Friday (excluding public holidays);
- **"Normal Working Hours"** means 9 a.m. to 5 p.m., Monday through Friday (excluding public holidays);
- **"Extended Working Hours"** means all hours outside Normal Working Hours;

#### 1.2. General Construction

In interpreting Softlink agreements and these terms the following rules must be applied unless the context otherwise requires:

- Headings to clauses are for reference only and are not an aid in interpretation.
- References to statutory provisions will be construed as references to those provisions as they may be amended or re-enacted or as their application is modified by other provisions from time to time.
- References to clauses or schedules are to clauses of or schedules of an agreement, and any schedules referred to form part of an agreement.
- References to a party are to a party to the agreement.
- All periods of time include the day on which the period commences and also the day on which the period ends.
- Any date which is not a Business Day, upon or by which anything is due to be done by any party, will be deemed to be a reference to the next Business Day.
- Words importing the plural include the singular and vice versa and words importing gender import all genders.
- Any obligation not to do something will be deemed to include an obligation not to suffer, permit or cause that thing to be done.
- All prices or amounts shown in any Softlink document will be in NZ dollars and will exclude GST unless otherwise stated.

### 2 Acceptance

#### 2.1. Acceptance of these terms and conditions

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.

These terms and conditions may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistency with any other document or contract between the Client and Softlink.

#### 2.2. Variations to terms and conditions

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.

### **2.3. Disclaimer**

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.

### **2.4. Errors and Omissions**

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 by Softlink in the formation and/or administration of this contract
- (b) contained in/omitted from any literature supplied by Softlink in respect of the Services

In the event such an error and/or omission occurs in accordance with clause 2.4 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.

### **2.5. Authorised Representatives**

Unless otherwise limited 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).

In the event that the Client's duly authorised representative 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.

### **2.6. Change in Control**

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, contact numbers, 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.

## **3 Supply and Delivery**

### **3.1. Delivery**

The Client may order Products or Services and Softlink will use its best endeavours to deliver those Products or Services within the agreed time. Softlink has no obligation to deliver any Product or Service unless Softlink accepts the order.

### **3.2. Part delivery**

Softlink may make delivery of Products or Services by instalments and the Client must pay for any instalments that have been delivered regardless of whether all Products or Services ordered have been delivered.

### **3.3. Removal or replacement of products or services**

Softlink may withdraw any Product or Service from supply without notice, effective immediately, but will remain liable to supply any Product or Service that has already been ordered.

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 4.4. 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.

### **3.4. Place of delivery**

Delivery of any Product will be deemed to have taken place when that Product is placed on the Client's premises or on the Client's carrier vehicle for removal from Softlink's premises. The Client accepts that the terms of carriage will be the standard terms upon which the carrier carries goods for Softlink or the Client.

## 4 Price and Payment

### 4.1. Orders for products or services

Where these terms form part of a signed estimate, order or agreement between Softlink and the Client that exceeds \$10,000.00, including GST, then a deposit equal to 30% of the total value is payable upon signing and acceptance of that estimate, order or agreement.

Subject to the [Trading Accounts](#) clause of these terms the balance is due for payment upon receipt of the Products or Services from Softlink by the Client.

### 4.2. Deposits

Deposits are not refundable unless a request to refund is received, in writing, within 24 hours of signing an estimate, order or agreement, in which case the supply of the Products or Services ordered will be cancelled and deposit refunded.

### 4.3. Price payable

The price payable for a Product or Service will be the price specified in any order, estimate, agreement or where no price is specified then Softlink's standard price for the Product or Service at the time of order will apply.

### 4.4. Prices

Softlink may amend prices from time to time without notice and effective immediately. The issue of amended pricing will not affect the price payable for Products or Services that have already been ordered.

### 4.5. Tax, insurance and freight

Any price stated by Softlink is exclusive of taxes, costs of freight insurance and freight unless stated otherwise. The Client must pay all taxes payable in respect of the supply of the Products or Services (including Goods and Services Tax) and, if Softlink arranges the insurance for and/or freight of any Product to be delivered to the Client, any insurance and freight costs incurred by Softlink.

Insurance arranged by Softlink shall be upon terms which Softlink, in its sole discretion, negotiates with the insurer. The Client has no claim against Softlink arising out of the terms of insurance.

### 4.6. No set off or deduction

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.

## 5 Trading Accounts

### 5.1. Trading accounts

Trading accounts are available to approved Clients upon application to, and by the approval of Softlink. Provided that a 30% deposit is paid in accordance with these terms, payment of trading accounts is due on the date shown on the invoice ("the due date").

### 5.2. Cash-only basis

Any Client with a Trading Account balance overdue for 30 days may be placed on a cash only basis until the account is brought within Softlink's normal trading terms and Softlink re-approves the Client for a Trading Account.

## 6 Ownership and Risk

### 6.1. Risk

Risk of loss or damage to Products will pass to the Client upon delivery, in accordance with the [Place of Delivery](#) clause of these terms. The Client must insure the Products, on Softlink's behalf, from the time of delivery until payment has been made in full for those Products.

### 6.2. Ownership

Softlink will retain legal and beneficial ownership of all Products until it receives payment in full for them and all other amounts owing to it and until the Client has satisfied all obligations owed to Softlink, even though Softlink may have granted the Client a period of credit.

### 6.3. Storage

The Client holds the Products as fiduciary bailee and agent for Softlink and must store the Products in such a way that they are clearly identifiable as Softlink's property. The Client must keep separate records in respect of the Products until payment in full has been made.

## 6.4. Sale

The Client must not sell, dispose of or otherwise part with possession of the Products until full payment has been received.

## 6.5. Personal Property Securities Act 1999 (PPSA)

- 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.
- 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.
- 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.
- The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 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.
- The Client shall unconditionally ratify any actions taken by Softlink under these conditions.

## 6.6. Consumer Guarantees Act 1993

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

# 7 Intellectual Property and Confidentiality

## 7.1. Intellectual Property

- 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 agreement (including, but not limited to, the full payment of the Price).
- 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.
- 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.
- 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: (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; (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.
- 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.
- 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 agreement 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 agreement by the Client.
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## 7.2. Confidentiality

- 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.
- 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.
- 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.
- Confidential information excludes information: (a) generally available in the public domain (without unauthorised disclosure under this agreement); (b) received from a third party entitled to disclose it; (c) that is independently developed.
- The obligations of this clause 18 shall survive termination or cancellation of this agreement.

## 8 Credits for Returned Products

Credits sought for returned Products are at Softlink's exclusive discretion and the Products:

- (a) must be returned within 7 days of receipt;
- (b) must be returned free to Softlink, all transportation charges, insurance, taxes, duties and additional charges being borne by the Client;
- (c) must be in as new condition in the manufacturer's (or supplier's) original containers, unsoiled and undamaged; and (d) must be accompanied by number and date of supplying invoice.

## 9 Software Licenses

### 9.1. Software licenses

Where Softlink supplies the Client with any Product containing any software, the Client will enter into a software license agreement with the owner of the intellectual property in that software (the "Owner") on request, in the form required by the Owner, pursuant to which the Owner will license the Client to use the software for its own internal business purposes on payment of the Owner's fees.

### 9.2. Software license fees

Subject to any software license agreement in force between the parties, Softlink will determine the fees payable by the Client in respect of any software license by written notice to the Client from time to time. Those fees will become an amount payable to Softlink under these terms.

## 10 Warranties and Exclusions

### 10.1. Limitation of liability

Softlink's liability in relation to the supply of Products or Services is limited to the price of the Product or the charge for the Service in respect of which such liability arises. Softlink will have no further liability or responsibility for any direct, indirect or consequential injury, loss or damage whatsoever and howsoever arising (including but not limited to loss or damage relating to the Client's application software, operating system software or data files).

### 10.2. Supply for business purposes

Where the Client acquires or holds itself out as acquiring the Products or Services for business purposes as defined in the Consumer Guarantees Act 1993, and that acquisition might be subject to that Act, the Client agrees that the Consumer Guarantees Act will not apply to its acquisition of the Products or Services.

### 10.3. Warranty

The conditions applicable to the warranty given 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.
- (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.

### 10.4. Product warranty claims

To make a warranty claim for any Product supplied by Softlink then the Client must document the problem, stating the Product make/model(s), serial number(s) and nature of the fault(s). When Softlink has had a reasonable opportunity to investigate the claim and agrees the Product is faulty the Client may elect to return the Product to Softlink's office or purchase on-site services to have the Product de-installed.

### 10.5. Product warranty Repairs

Softlink will arrange to have faulty Product repaired or replaced while the Product is within the manufacturer's stated warranty period. Unless the warranty terms provide provision for on-site service then it is the Client's responsibility to return the faulty Product to Softlink's premises. All risk of damage to or loss of any Product during return to Softlink remains with the Client. The Client may elect to collect the repaired or replaced Product from Softlink's office or purchase services to have the Product installed at the Client's premises.

### 10.6. Service warranty claims

To make a warranty claim for any Service supplied by Softlink then the Client must document of the problem. When Softlink has had a reasonable opportunity to investigate the claim and agrees the Service is faulty then Softlink will discuss and agree with the Client on mutually acceptable method of resolving the warranty claim.

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.

### 10.7. Discrepancies

If there is any discrepancy between the type or amount of Product or Service ordered by the Client and the type or amount of Product or Service delivered by Softlink then the Client must forward to Softlink, within 5 Business Days of delivery of those Products or completion of the Service, a copy of the order and a written statement specifically identifying the discrepancy.

If Softlink, having had a reasonable opportunity to investigate the claim, forms the reasonable opinion there has been such a discrepancy then Softlink will immediately correct the discrepancy by delivering the correct type or amount of Product or Service ordered. This clause is subject to Softlink's right to make delivery of Products by instalments. If the Client does not comply with this clause, it will be deemed to have accepted the Products or Services and Softlink will not incur any liability whatsoever to the Client.

## 11 Default

### 11.1. Late payment

If the Client does not pay any amount payable under these terms by the due date, the Client must pay Softlink interest on demand (as liquidated damages) on the amount due from the due date until the date of payment, at a rate equal to 5% per day above the current overdraft rate which Softlink has with its principal banker (in addition to the Client remaining liable for the full amount outstanding).

## 11.2. Remedies

If Softlink has reasonable cause to believe that the Client has breached these terms, has committed or will commit an act of bankruptcy, has had or is about to have a receiver appointed, or is insolvent, Softlink may (without prejudice to its other rights) withhold supplies of further Products or Services to the Client (whether under these terms or any other agreement or arrangement) without notice, demand any form of security from the Client to secure the Client's obligations under these terms, and/or recover and/or resell any of the Products and enter any premises where it believes the Products are stored, and the Client grants Softlink the irrevocable right and authority to do so. Softlink may recover and resell for its own account only sufficient Products to satisfy all unpaid liabilities, the costs of recovery and resale and the costs referred to in the [Costs](#) clause. If Softlink recovers any excess, it will not be liable in damages to the Client but must account to the Client for the excess.

## 11.3. Costs

The Client shall pay all costs and expenses incurred by Softlink (including costs on a solicitor/client basis) in enforcing Softlink's rights under these terms.

## 12 Notices

### 12.1. Service of notices

Any notice given will be deemed to be validly given if personally delivered, posted, e-mailed or forwarded by facsimile transmission to the address of the party or to such other address as that party may designate by written notice.

### 12.2. Time of notice

Any notice will be deemed to be validly given:

- (a) in the case of delivery, when received;
- (b) in the case of e-mail, when sent;
- (c) in the case of facsimile transmission, when sent;
- (d) in the case of posting, on the second day following the date of posting;
- (e) provided that any notice is personally delivered, e-mailed or sent by facsimile either after 5 pm on a working day or on any day that is not a working day will be deemed to have been received on the next working day.

## 13 Alternative Dispute Resolution

### 13.1. Dispute

Where any question, dispute or difference ("dispute") arises between the parties concerning or in any way arising out of an agreement or the performance of either party in terms of an agreement, the parties will make a genuine effort to resolve the dispute without resorting to litigation, using the procedures set out in this clause.

### 13.2. Representatives for negotiations

The party seeking resolution of the dispute ("the first party") must notify the other party ("the other party") and nominate in that notice its representative for the negotiations. The other party must then promptly notify the first party of the name of its representative for the negotiations. Each nominated representative will have authority to settle the dispute.

### 13.3. Alternative dispute resolution

If the parties are unable to resolve the dispute by discussion and negotiation within 30 days of receipt of the written notice from the first party, then within a further 7 days, the parties will try to agree a process for resolving the dispute, such as further negotiations, mediation, independent expert determination or mini-trial, but not arbitration or litigation. Agreement on a process must include agreement on:

- (a) the procedure and timetable for any exchange of documents and other information relating to the dispute; and
- (b) procedural rules and a timetable for the conduct of the selected method of proceeding; and
- (c) a procedure for selection and compensation of any neutral person who may be employed by the parties in dispute.

### 13.4. Referral to arbitration

If:

- (a) the parties fail to agree on a dispute resolution process within the time limit; or
- (b) the dispute remains unresolved 30 days after agreement on a dispute resolution process; then the dispute will be referred to the arbitration of a single arbitrator agreed upon between the parties or in default of agreement to be appointed by the President for the time being of the Auckland District Law Society, and the arbitration will be governed by the Arbitration Act in force at the date of this agreement. Either party may appeal to the High Court on a point of law arising out of the arbitral award.

### **13.5. Urgent interlocutory relief**

Nothing in this clause will prevent any party from seeking urgent interlocutory relief from the courts.

## **14 Term of Agreement**

### **14.1. Commencement**

Any agreement shall commence upon the earlier of:

- (a) The date specified as the "Start Date"
- (b) the date that these terms are executed by the Client by signing an estimate, order or agreement, and
- (c) the date that any Products or Services are next ordered by the Client following receipt of these terms and conditions by the Client.

### **14.2. Inspection before commencement**

If the Client's existing hardware or software was previously maintained by an organisation other than Softlink, Softlink may elect to inspect them (at the Client's expense) to determine if they are in good operating condition. If Softlink considers repairs or modifications are necessary, the Client will have them affected at its expense and commencement of an agreement may, at the option of Softlink, be deferred until those repairs or modifications are carried out to the satisfaction of Softlink.

### **14.3. Termination by notice**

Unless otherwise stated in any Softlink estimate, order or agreement then an agreement may be terminated by either party by one months notice in writing to the other.

### **14.4. Termination for breach**

Either party ("the first party") may terminate an agreement immediately by notice in writing to the other ("the other party"):

- (a) if the other party commits any breach of the agreement that is incapable of being rectified.
- (b) If the other party commits any breach of the agreement that is not rectified within 30 days of written notice of the breach having been given to the other party; (c) If the other party becomes insolvent;
- (d) If a receiver or manager of any asset of the other party is appointed, or an order is made or resolution passed for the liquidation of the other party (other than for the purpose of a solvent amalgamation or reconstruction).

### **14.5. Accrued Rights**

Termination of an agreement will be without prejudice to any rights or obligations accrued as at the date of termination.

### **14.6. Continuing Obligations**

On termination of an agreement all provisions of the agreement that are intended to continue will do so in full force and effect.

### **14.7. Payment**

Subject to the [Termination for breach](#) clause, on termination of an agreement the Client must immediately pay to Softlink all amounts payable (whether or not they have fallen due for payment).

### **14.8. Return of products**

On termination of an agreement the Client will, if Softlink requires, return to Softlink any or all of the items in the Client's possession which are the property of Softlink, regardless of the terms on which they have come into the Client's possession. The Client will not be required to pay for the items Softlink has requested are returned.

### **14.9. Other Rights**

The rights and remedies set out in the agreement regarding termination are without prejudice to any other rights of the parties at law to recover losses upon termination of the agreement.

## **15 General**

### **15.1. General**

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.

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 in New Zealand.



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).

Softlink may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.

The Client cannot licence or assign without the written approval of Softlink.

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.

The Client agrees that Softlink may amend these terms and conditions by notifying 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.

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.

This agreement 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 agreement 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 agreement.

The Client indemnifies Softlink against any direct, indirect or consequential injury, loss or damage that Softlink may suffer as a result of a breach by the Client of these terms or arising out of any act, default or omission, or any representation made by the Client.

## 15.2. Force majeure

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, 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 agreement 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 agreement; 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.

## 15.6. Privacy Act 1993

The Client authorises Softlink or Softlink's agent to:

- (a) access, collect, retain and use any information about the Client; (i) (including 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.

The Client shall have the right to request Softlink for a copy of the information about the Client retained by Softlink and the right to request Softlink to correct any incorrect information about the Client held by Softlink.