

The terms of trade set out below govern all of the supplies of goods and services from Digital Genius Limited trading as Digital Genius (herein referred to as “Digital Genius”) to you (herein referred to as “Customer” or “The Customer”). They will replace any terms and conditions contained in any document used by you and purporting to have contractual effect, and your acceptance of any goods or services from Digital Genius indicates your acceptance of these terms of trade.

1. Price & Order

1.1 Unless otherwise stated all price quoted are exclusive of Goods and Services Tax, freight, insurance or handling charges. The customer shall pay Goods and Services Tax, freight, insurance or handling charges in addition to the quoted price.

1.2 Digital Genius reserves the right to revise its prices without notice at any time prior to accepting an order. The receipt of an order by Digital Genius from a Customer does not constitute acceptance by Digital Genius.

1.3 Digital Genius reserves the right to refuse to accept any order or any part order for any reason whatsoever.

1.4 The prices quoted may be revised by Digital Genius subsequent to accepting an order in the event of any occurrence affecting delivery caused by war, Government action, variation in Customs duties, increased shipping charges, increase in price of the goods or services supplied to Digital Genius and any other matter beyond the control of Digital Genius. In that event the Customer shall have the right to withdraw its order.

1.5 All backorders at the time of any price change will reflect the new price.

1.6 Where goods or services are supplied to the Customer in instalments each instalment will comprise a separate contract and shall be paid for as if it were a separate order.

1.7 Products or Services from External Suppliers or Contractors: in the event that Digital Genius introduce or engage on the Customer’s behalf with an external supplier, contractor or other third party it remains the Customer’s responsibility to ensure they are familiar with that third party’s Terms and Conditions (if applicable). For Internet connectivity & Voice clients Digital Genius wish to remind customers that this is a separate agreement between the customer and Voyager Internet Limited, and is such bound by Voyager’s terms and conditions.

2. Delivery and Risk

2.1 You do not have the right to possess goods until they are delivered to you, or collected by you or your agent.

2.2 All claims for shortage or damage during delivery must be made to the carrier within 7 days of the date of delivery. Where goods appear to be damaged or missing you must contact the carrier and Digital Genius immediately.

2.3 Digital Genius will make every effort to ensure delivery of goods, or performance of services, is on time but will not be liable to you for any loss or damage arising in any way from any delay in delivery or performance.

3. Payments and Property

3.1 Unless Digital Genius has agreed to extend credit to you, you must pay for the goods or services before supply, and you will not be considered to have paid until the payment has been fully cleared

through the banking system into Digital Genius's bank account.

3.2 Where Digital Genius has agreed in writing to extend credit to you, you must pay in full within 14 days following the dispatch of an invoice. If you have not paid in full by the due date, Digital Genius may charge you interest compounding monthly on the unpaid overdue balance at the rate of 2.5% per month, and Digital Genius may at its option suspend delivery of further goods or performance of further services until the account is paid.

3.3 Property and ownership in goods, whether in their original form or incorporated or attached to another product, will not pass to you but will remain with Digital Genius until Digital Genius receives payment in full of the purchase price of the goods and all other amounts that you owe to Digital Genius for any reason.

3.4 All payments shall immediately become due to Digital Genius if you become insolvent, commit any act of bankruptcy, or if a receiver, liquidator or statutory manager is appointed over any of your assets or undertaking, or if you make or attempt to make an arrangement or composition with creditors.

3.5 Digital Genius may refuse to supply any further goods or services and/or grant further extensions of credit while any overdue amounts owing to Digital Genius remain unpaid.

3.6 Digital Genius may charge a restocking fee of up to 20% of the invoiced price of the goods returned. This is levied at the Company's absolute discretion.

3.7 Whenever the Customer is in default of payment or any account due to Digital Genius, the Customer will pay all the costs of the Company (as between Solicitor and Client, Debt Collectors fee) of and incidental to any legal proceedings. For which the Company may take for the purpose of obtaining any monies to it or enforcing Digital Genius's rights, powers and remedies under these terms of trade.

4. Expenses Incurred

4.1 Travel Expenses. If the Customer wishes services to be performed outside of the Auckland Region, then the Customer agrees to pay all travel and accommodation expenses incurred by Digital Genius.

4.2 Mileage. If the customer's site is more than 10km from Digital Genius' Offices, then the client agrees to pay Mileage at \$1 per kilometre to and from Digital Genius' offices.

5. Goods Returned for Credit

5.1 Digital Genius may at its discretion accept the return for credit of goods, other than books, printers, or licensed software, which are not defective provided that they are returned within 14 days of invoice date, freight and insurance prepaid in original packing in as new and saleable condition, with a copy of the original purchase invoice and a note of the return authorisation number.

6. Cancellation

6.1 Without prejudice to any other rights that Digital Genius may have against the Customer, Digital Genius may cancel this contract if the Customer fails to make full payment of any invoices by the due date for payment.

6.2 Digital Genius may also cancel this contract without notice if the Customer takes any steps for its liquidation, request removal from the Registrar under the Companies Act 1993, or proposes any amalgamation under the Companies Act 1993 or any equivalent analogous procedures or commits an act of bankruptcy or is unable to pay its debts as they fall due.

6.3 The Customer may not cancel this contract except upon full payment to Digital Genius of the value of goods and services provided to the Customer at the date of termination, together with any

non-recoverable costs (including special, incidental and consequential damages and loss of profit attributable to the cancellation) and all expenses in respect of the goods or services for which Digital Genius are committed to incur and pay.

7. Warranty

7.1 Goods are subject to manufacturers' warranties only, unless the Customer is otherwise notified in writing by Digital Genius and as such Digital Genius will pass on the benefits of those warranties to the Customer.

7.2 Any faulty product should be returned to Digital Genius immediately, whereupon it will be repaired or replaced at the Company's discretion. The warranty is void if the goods have been tampered with, damaged by accident, improper use or incorrect installation. Digital Genius shall not be liable for consequential or special damages under any circumstances.

7.3 Where goods are subject to a return to base warranty the Customer is responsible for returning the goods to Digital Genius or the manufacturer (as provided by the warranty) and may be responsible for additional costs (but not limited to) freight.

8. Consumer Guarantees Act 1993

8.1 In circumstances where Digital Genius is deemed to be a supplier if the Customer acquires our goods or services for the purpose of business as defined in the Consumer Guarantees Act 1993, the provisions of the Act do not apply.

9. Disclaimer of Liability

9.1 To the maximum extent permitted by law Digital Genius shall not be liable for or in respect of any loss or damage suffered by the Customer arising of or incidental to:

9.1.1 riot, civil commotion, lock-out, trade or union dispute, labour disturbance, acts of malicious persons, stoppage or restraint of labour from whatever cause.

9.1.2 mechanical accident, breakdown or failure of any nature of the Customers computer system (including hardware and software)

9.1.3 any existing or latent defect in, or any damage to any hardware or software that is caused by or results from or contributed to by any other party other than Digital Genius.

9.1.4 any other cause whatsoever outside the reasonable control of Digital Genius.

10. Limitation of Liability

10.1 Without prejudice, whilst Digital Genius will provide all reasonable assistance to enable The Customer to recover from any system error arising out of or in connection with the performance of the Services, Digital Genius will not in any way be liable for such system error unless the error is caused by our gross negligence or wilful conduct. For the purposes of this paragraph, "system error" means (i) system or network downtime, (ii) reduction of bandwidth, (iii) any loss or damage to your system or network and/or (iv) loss of access to any information.

10.2 Digital Genius will not be liable for any special, incidental, exemplary, punitive, indirect or consequential damages including loss of data, loss of profits, revenue, business and anticipated savings unless such loss is attributable to the wanton neglect, omission, negligence, or other action by Digital Genius authorised personnel or delegated technicians.

10.3 Unless the customer has a active service agreement including a managed backup solution, the customer accepts all responsibility for the security of their data and will not hold Digital Genius liable in the event of a catastrophic loss of data.

10.4 In addition to clauses 9 and 10 above it is understood and accepted by the Customer that should Digital Genius (notwithstanding the provisions of these terms and conditions of trade) be found liable for any loss or damage sustained or suffered by the Customer whether such loss or

damage arises from the breach of Digital Genius of any contractual or statutory provisions, is due or arises from any negligence or act of omission on the part of Digital Genius, its servants or agents in any respect, the liability of the Company hereunder and at common law shall be limited to sum not exceeding the aggregate amount paid by the Customer to Digital Genius for providing the services only, or is the costs and expenses incurred in the rectification, reconciliation, reinstatement of the system to its fully functional state.

11. General Conditions

11.1 Digital Genius reserves the right to change these terms of trade from time to time.

11.2 If Digital Genius fails to enforce any terms or to exercise its right under these terms of trade at any time. Digital Genius has not waived those rights.

11.3 If any provision of these terms of trade is held to be invalid or unenforceable for any reason, the remaining provisions shall remain in full force and effect and the parties shall adjust their respective rights and obligations in accordance with the spirit and intent of the parties as shown by these terms of trade.

12. Personal Guarantee of Company Director or Trustee

12.1 If the Customer is a company, or Trust, the Director(s) or Trustee(s) jointly and severally personally guarantee and undertake as principle debtors to Digital Genius the payment of any and all other monies now and hereafter owed by the Customer to the Company. Any personal guarantee made by any other party shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in this contract. The Customer and the guarantors shall be jointly and severally liable under the terms and conditions of this contract.

13. Indemnity

13.1 The Customer shall indemnify Digital Genius against all claims in respect of any loss or damage including consequential loss sustained by a third party howsoever caused after the receipt of goods or services by the Customer.

14. Governing Law

14.1 This contract shall be governed by New Zealand law and the Customer and Digital Genius submit to the exclusive jurisdiction of the New Zealand Courts.

15. Privacy

15.1 The Customer noting the requirements under the Privacy Act 1993 authorises and directs that Digital Genius can seek and obtain from and supply any information concerning the credit or business standing of the Customer to any other person whether trader, merchant, firm, organisation, company or any agency or source whatever including any credit agency or association or the like and directs any such person to supply and receive and record such information to and from the Company.

16. Personal Property Securities Act 1999 ("the Act")

16.1 The Customer grants a security interest (as that term is define in the Act) to Digital Genius over all goods presently or in the future supplied to the Customer by Digital Genius until the purchase price of each good and all amounts owing to Digital Genius are paid in full.

16.2 On the request of Digital Genius the Customer shall promptly execute any documents and do anything else required by the Company to ensure the security interest created under these

conditions constitutes a perfected security interest (as that term is defined in the Act) over the goods supplied to the Customer by Digital Genius, including:

16.2.1 executing and amendment to these conditions as reasonably required by Digital Genius

16.2.2 executing any replacement or additional security document(s) and

16.2.3 providing any information to Digital Genius to enable it to complete a Financing Statement or a Financing Change Statement

16.3 The Customer shall not agree to allow any person to file a Financing Statement over any of the goods supplied pursuant to these conditions without the prior written consent of Digital Genius and the Customer shall notify Digital Genius immediately if it becomes aware of any person taking any step to file a Financing Statement against any goods which are supplied pursuant to these conditions.

16.4 The Customer irrevocably appoint Digital Genius to be your attorney to do anything which you agree to do under this agreement and anything which the attorney thinks desirable to protect Digital Genius's interest under this agreement and you ratify anything done by the attorney under this clause.

16.5 The Customer waives the right to receive a copy of the verification statement confirming registration of a Financing Statement or a Financing Change Statement to the security interest created by this agreement.

16.6 The Customer agrees sections 114(1)(a), 133 and 134 of the Act shall not apply to this agreement or the security under this agreement.

16.7 The Customer agrees that none of the Customers rights as a debtor under section 11, 119, 120(2), 121, 125, 126, 127, 129, 131, and 132 shall apply to this agreement

17. Intellectual Property

17.1 All Intellectual Property shall remain the property of Digital Genius and any Supplier entitled thereto and neither Digital Genius nor its Suppliers transfer any right, title or interest in the Intellectual Property to the Customer.

17.2 The Customer shall not use any trade marks which are the property of Digital Genius or its Suppliers, or any similar words or marks, or any combination of words which includes any of those trademarks or any similar words or marks, except to the extent expressly authorised by Digital Genius in writing.

17.3 The Customer agrees to only dispatch any goods supplied by Digital Genius under the trademarks under which they are supplied, and under no circumstances shall the Customer apply any trade marks to any product which is not a genuine branded product supplied to the Customer by Digital Genius.

17.4 The Customer will not cause or permit anything which may interfere with, damage or endanger the trade marks or the intellectual property of Digital Genius or its Suppliers, or assist or allow others to do so.

17.5 The Customer undertakes to advise Digital Genius immediately when it becomes aware of any unauthorized use or attempted use by any person of the trademarks or other intellectual property rights of Digital Genius or its Suppliers.

17.6 In the case of the Customer's account with Digital Genius being terminated the Customer shall immediately discontinue use of any of the trade marks which are the property of the Company or its Suppliers in any sign or advertising and thereafter shall not use those trademarks directly or indirectly in connection with its business.

18. Customer Information and Guarantee

18.1 The Customer warrants that the information supplied to Digital Genius is true and correct and

the Customer acknowledges that Digital Genius will rely upon the correctness of the representations and information the Customer has provided. The Customer further undertakes to inform Digital Genius of any changes in the information.

19. Disclosure

19.1 Digital Genius may at times receive demonstration goods, gifts, commissions, reimbursements or the like from its supplier network. Any such activity will not impact the impartial advice that is provided to clients. Upon request we are happy to disclose any such relationship relevant to any goods or services you purchase from us.

20. Confidentiality

20.1 Digital Genius and The Customer agree jointly not to disclose to any person any information relating to the Services (including the user ID number(s), password(s) and PIN), software or equipment which are/is acquired from or provided by Digital Genius or our third party supplier. This restriction will not apply to any information which is or becomes publicly available otherwise than through a breach of your obligation.

21. Force Majeure

21.1 Neither party shall be liable for any delay or failure to perform its obligations pursuant to this Agreement to the extent that such delay or failure is due to fire, major power failure, strike, Acts of God and other force majeure events, including Earthquake(s).

21.2 If a delay or failure to perform obligations is caused or anticipated due to force majeure, the party unable to fulfil its obligations shall immediately give notice in writing to the other party of such fact and the reasons therefore and shall promptly take all reasonable steps to overcome the circumstances delaying or preventing its performance.

21.3 If a delay or failure to perform a party's obligations due to force majeure exceeds ten (10) Working Days either party may immediately terminate the Agreement on providing notice to the other party.

22. Inducement of Personnel

22.1 Except as otherwise agreed to in writing, both parties agree to refrain from hiring, contracting or employing any employee of the other or its subsidiaries or parent The Company who performs services in connection with this Agreement until one (1) year from the conclusion of this Agreement.

23. Non Waiver

23.1 If Digital Genius fails to enforce any terms or to exercise its rights under these terms of trade at any time, Digital Genius has not waived those rights.

24. Severability

24.1 If any provision of these terms of trade is held to be invalid or unenforceable for any reason, the remaining provisions shall remain in full force and effect and the parties shall adjust their respective rights and obligations in accordance with the spirit and intent of the parties as shown by these terms of trade.