

# iFix Computers – Terms & Conditions of Trade

## 1. Definitions

- 1.1 "iFIX" shall mean iFix Computers, its successors and assigns or any person acting on behalf of and with the authority of iFix Computers.
- 1.2 "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by iFIX to the Client.
- 1.3 "Guarantor" shall mean that person (or persons) who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Goods" shall mean all Goods provided by iFIX to the Client (and where the context so permits shall include any provision of Services as hereinafter defined) as described on any invoices, quotation, work authorisation or any other forms as provided by iFIX to the Client.
- 1.5 "Services" shall mean all Services provided by iFIX to the Client and includes any advice or recommendations (and where the context so permits shall include any provision of Goods as defined above).
- 1.6 "Price" shall mean the price payable for the Goods as agreed between iFIX and the Client in accordance with clause 4 of this contract.

## 2. Consumer Guarantees Act 1993

- 2.1 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 do not apply to the supply of Goods by iFIX to the Client.

## 3. Acceptance

- 3.1 Any instructions received by iFIX from the Client for the provision of Goods and/or the Client's acceptance of Goods provided by iFIX shall constitute acceptance of the terms and conditions contained herein.
- 3.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 3.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of iFIX.
- 3.4 The Client shall give iFIX not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by iFIX as a result of the Client's failure to comply with this clause.
- 3.5 Goods are provided by iFIX only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

## 4. Price and Payment

- 4.1 At iFIX' sole discretion the Price shall be either:
  - (a) as indicated on invoices provided by iFIX to the Client in respect of Goods provided; or
  - (b) iFIX' Price at the date of delivery of the Goods according to iFIX' current pricelist; or
  - (c) iFIX' quoted Price (subject to clause 4.2) which shall be binding upon iFIX provided that the Client shall accept iFIX' quotation in writing within thirty (30) days.
- 4.2 iFIX reserves the right to change the Price in the event of a variation to iFIX' quotation. Any variation from the plan of scheduled work or specifications (including, but not limited to, any variation as a result of additional work required due to hidden or unidentifiable difficulties that could not reasonably have been foreseen by iFIX during the course of the Services, or as a result of increases to iFIX in the cost of parts and labour) will be charged for on the basis of iFIX' quotation and will be shown as variations on the invoice.
- 4.3 At iFIX' sole discretion:
  - (a) payment shall be due on delivery of the Goods; or
  - (b) payment for certain approved Clients shall be made by instalments in accordance with iFIX' payment schedule; or
  - (c) payment for certain approved Clients shall be due twenty (20) days following the end of the month in which the invoice is dated.
- 4.4 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 4.5 Payment will be made by cash, cheque, bank cheque, direct credit, or by any other method as agreed to between the Client and iFIX.
- 4.6 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

## 5. Delivery of the Goods

- 5.1 At iFIX' sole discretion delivery of the Goods shall take place when:
  - (a) the Client takes possession of the Goods at iFIX' address; or
  - (b) the Client takes possession of the Goods at the Client's nominated address (in the event that the Goods are delivered by iFIX or iFIX' nominated carrier); or
  - (c) the Client's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Client's agent.
- 5.2 At iFIX' sole discretion the costs of delivery are in addition to the Price and, where applicable, charged to the Client's account.
- 5.3 iFIX may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 5.4 The failure of iFIX to deliver shall not entitle either party to treat this contract as repudiated.
- 5.5 iFIX shall not be liable for any loss or damage whatsoever due to failure by iFIX to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of iFIX.

## 6. Risk

- 6.1 If iFIX retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, iFIX is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by iFIX is sufficient evidence of iFIX' rights to receive the insurance proceeds without the need for any person dealing with iFIX to make further enquiries.
- 6.3 It shall be the Client's sole responsibility to remove any removable media (including, but not limited to, diskettes, CDs, DVDs or PC Cards) from the Goods prior to returning or submitting the Goods for repair or replacement.
- 6.4 iFIX shall not be held liable for any loss or corruption of data or files (including, but not limited to, software programmes) resulting from servicing or repairs being undertaken on the Goods. It is the sole responsibility of the Client to back-up any data which they believe to be important, valuable or irreplaceable prior to bringing in any Goods for servicing or repairs.

## 7. Title

- 7.1 iFIX and Client agree that ownership of the Goods shall not pass until:
  - (a) the Client has paid iFIX all amounts owing for the particular Goods; and
  - (b) the Client has met all other obligations due by the Client to iFIX in respect of all contracts between iFIX and the Client.
- 7.2 Receipt by iFIX 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 and until then iFIX' ownership or rights in respect of the Goods shall continue.
- 7.3 It is further agreed that:
  - (a) where practicable the Goods shall be kept separate and identifiable until iFIX shall have received payment and all other obligations of the Client are met; and
  - (b) until such time as ownership of the Goods shall pass from iFIX to the Client iFIX may give notice in writing to the Client to return the Goods or any of them to iFIX. Upon such notice being given the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and
  - (c) the Client is only a bailee of the Goods and until such time as iFIX has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Client owes to iFIX for the Goods, on trust for iFIX; and
  - (d) until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that iFIX will be the owner of the end products; and
  - (e) if the Client fails to return the Goods to iFIX then iFIX or iFIX' agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Goods are situated and take possession of the Goods, and iFIX will not be liable for any reasonable loss or damage suffered as a result of any action by iFIX under this clause.

## 8. Personal Property Securities Act 1999 ("PPSA")

- 8.1 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 previously supplied by iFIX to the Client (if any) and all Goods that will be supplied in the future by iFIX to the Client.
- 8.2 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 iFIX may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, iFIX 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 a financing change statement or a change demand without the prior written consent of iFIX; and
  - (d) immediately advise iFIX 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.
- 8.3 iFIX and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 8.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 8.5 Unless otherwise agreed to in writing by iFIX, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 8.6 The Client shall unconditionally ratify any actions taken by iFIX under clauses 8.1 to 8.5.

## 9. Security and Charge

- 9.1 Despite anything to the contrary contained herein or any other rights which iFIX may have however:
  - (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or

several interest in the said land, realty or any other asset to iFIX or iFIX' nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that iFIX (or iFIX' nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.

- (b) should iFIX elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify iFIX from and against all iFIX' costs and disbursements including legal costs on a solicitor and own client basis.
- (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint iFIX or iFIX' nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 9.1.

## 10. Defects

- 10.1 The Client shall inspect the Goods on delivery and shall within five (5) days of delivery (time being of the essence) notify iFIX of any alleged defect, error or omission, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford iFIX an opportunity to inspect the Goods within a reasonable time following such notification 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 iFIX has agreed in writing that the Client is entitled to reject, iFIX' liability is limited to either (at iFIX' discretion) replacing the Goods or repairing the Goods.

## 11. Returns

- 11.1 iFIX may (in its discretion) accept the return of Goods for credit, but this may incur a handling fee of twenty-five percent (25%) of the value of the returned Goods plus any freight, and provided that:
  - (a) iFIX has agreed in writing to accept the return of the Goods; and
  - (b) the Goods are returned at the Client's cost within five (5) days of the delivery date; and
  - (c) iFIX 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.
- 11.2 Non-stocklist items or Goods made to the Client's specifications are under no circumstances acceptable for credit or return.

## 12. Warranty

- 12.1 For Goods not manufactured by iFIX, the warranty shall be the current warranty provided by the manufacturer of the Goods. iFIX 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.

## 13. Intellectual Property

- 13.1 Where iFIX has designed, drawn or written Goods for the Client, then the copyright in those designs and drawings and documents shall remain vested in iFIX, and shall only be used by the Client at iFIX' discretion.
- 13.2 The Client warrants that all designs or instructions to iFIX will not cause iFIX to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify iFIX against any action taken by a third party against iFIX in respect of any such infringement.
- 13.3 The Client agrees that iFIX may use any documents, designs, drawings or Goods created by iFIX for the purposes of advertising, marketing, or entry into any competition.
- 13.4 Where iFIX has provided computer software and documentation, iFIX retains ownership of the computer software and documentation, but grants a licence to the Client for use of the computer software and documentation. The Client will use any third-party software supplied by iFIX, and identified as such, strictly in terms of the licence under which it is supplied.

## 14. Default and Consequences of Default

- 14.1 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 iFIX' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 14.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by iFIX.
- 14.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify iFIX from and against all costs and disbursements incurred by iFIX in pursuing the debt including legal costs on a solicitor and own client basis and iFIX' collection agency costs.
- 14.4 Without prejudice to any other remedies iFIX may have, if at any time the Client is in breach of any obligation (including those relating to payment) iFIX may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. iFIX will not be liable to the Client for any loss or damage the Client suffers because iFIX has exercised its rights under this clause.
- 14.5 Without prejudice to iFIX' other remedies at law iFIX shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to iFIX shall, whether or not due for payment, become immediately payable in the event that:
  - (a) any money payable to iFIX becomes overdue, or in iFIX' opinion the Client will be unable to meet its payments as they fall due; or
  - (b) 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
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

## 15. Cancellation

- 15.1 iFIX 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 iFIX shall repay to the Client any sums paid in respect of the Price. iFIX shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 15.2 In the event that the Client cancels delivery of the Goods the Client shall be liable for any loss incurred by iFIX (including, but not limited to, any loss of profits) up to the time of cancellation.
- 15.3 Cancellation of orders for Goods made to the Client's specifications or non-stocklist items will definitely not be accepted, once the order has been processed.

## 16. Privacy Act 1993

- 16.1 The Client and the Guarantor/s (if separate to the Client) authorises iFIX to:
  - (a) collect, retain and use any information about the Client and/or Guarantors, for the purpose of assessing the Client's and/or Guarantors creditworthiness or marketing products and services to the Client and/or Guarantors; and
  - (b) disclose information about the Client and/or Guarantors, whether collected by iFIX from the Client and/or Guarantors directly or obtained by iFIX 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 and/or Guarantors.
- 16.2 Where the Client and/or Guarantors are an individual the authorities under clause 16.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 16.3 The Client and/or Guarantors shall have the right to request iFIX for a copy of the information about the Client and/or Guarantors retained by iFIX and the right to request iFIX to correct any incorrect information about the Client and/or Guarantors held by iFIX.

## 17. Unpaid iFIX' Rights

- 17.1 Where the Client has left any item with iFIX for repair, modification, exchange or for iFIX to perform any other Service in relation to the item and iFIX has not received or been tendered the whole of the Price, or the payment has been dishonoured, iFIX shall have:
  - (a) a lien on the item;
  - (b) the right to retain the item for the Price while iFIX is in possession of the item;
  - (c) a right to sell the item.
- 17.2 The lien of iFIX shall continue despite the commencement of proceedings, or judgement for the Price having been obtained.

## 18. Client's Disclaimer

- 18.1 The Client hereby disclaims any right to rescind, or cancel any contract with iFIX or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by iFIX and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.

## 19. General

- 19.1 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.
- 19.2 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 courts of Tauranga.
- 19.3 iFIX 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 iFIX of these terms and conditions.
- 19.4 In the event of any breach of this contract by iFIX the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 19.5 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 iFIX nor to withhold payment of any invoice because part of that invoice is in dispute.
- 19.6 iFIX may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 19.7 iFIX reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which iFIX notifies the Client of such change.
- 19.8 The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if section 15(d) were omitted from the Contractual Remedies Act 1979.
- 19.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 19.10 The failure by iFIX to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect iFIX' right to subsequently enforce that provision.