

# Orbits IT Solutions Ltd Terms and Conditions for Supply of Goods and Services

## 1. Definitions

- 1.1 In these Conditions, unless the context requires otherwise:
- (a) Client means the person who engages Orbits to supply Goods and/ or Services.
  - (b) Conditions means these Terms and Conditions and any special Terms and Conditions agreed in writing by Orbits.
  - (c) Delivery Date means the date specified by Orbits when the Goods are to be delivered.
  - (d) Goods means the goods which the Client agrees to buy from Orbits pursuant to these Conditions.
  - (e) Order means a request (either verbal or in writing) by the Client for Orbits to supply Goods / Services and includes specifications and project briefs whether prepared by Orbits or the Client.
  - (f) Price means the price for the Goods and/or Services excluding GST which shall be charged separately.
  - (g) Services means the services which Orbits supplies to the Client pursuant to these Conditions.
  - (h) Orbits means Orbits IT Solutions Limited and any other associated or subsidiary companies which supply Goods and/or Services to the Client.

## 2. Conditions Applicable

- 2.1 These Conditions shall apply to all Orders, to the exclusion of all other terms and conditions, including any terms and conditions which the Client may purport to apply under any purchase order, confirmation of order or similar document
- 2.2 All Orders shall be deemed to be an offer by the Client to engage Orbits pursuant to these Conditions.
- 2.3 Acceptance of delivery of Goods or the commencement of work by Orbits pursuant to an Order shall be deemed conclusive evidence of the Client's acceptance of these Conditions.
- 2.4 Any variation to these conditions (including any special Terms and Conditions agreed between the parties) shall be inapplicable unless agreed in writing by Orbits.

## 3. Orders

- 3.1 The Client shall use its best endeavours to ensure that any Orders are sufficiently detailed and specific to allow Orbits to complete such Orders to the satisfaction of the Client.
- 3.2 Each Order shall constitute a separate contract between Orbits and the Client.

## 4. Project Work

- 4.1 Where Orbits is supplying Services on an ongoing project basis for the Client, the Client shall appoint a representative ("Client Representative") to act as the principal point of contact between the parties who shall be responsible for ensuring adequate instructions or assistance is provided to Orbits.
- 4.2 Any variations to the Order shall not be valid unless set out in writing by the Client Representative.
- 4.3 Additional charges may be levied for any variations to the original Order on a time and materials basis in accordance with Orbits' current price list.

## 5. Intellectual Property

- 5.1 Diagrams, illustrations, plans, computer files and all other material and intellectual property owned by Orbits and/or developed by Orbits will remain its exclusive property. No right or licence is granted to the Client under any patent, trade mark, copyright, registered design right or other intellectual property right except the right to use the Goods.
- 5.2 The Client agrees that any copyright and/or unregistered design right arising from any work undertaken by Orbits of Goods produced will be owned by Orbits.

## 6. Price as per price list or quotation

- 6.1 The Price shall be calculated in accordance with Orbits' published price list current at the date of delivery of the Goods or performance of the Services. The Price is exclusive of GST, which shall be due at the rate ruling on the date of the GST invoice. Delivery may be charged in addition to the Price.
- 6.2 Where a quotation is provided it will only be valid for the time period specified on the quotation.
- 6.3 Any change to an Order of whatever nature after a quotation has been given invalidates that quotation.

## 7. Payment

- 7.1 Payment of the Price and GST shall be due 14 days following the date of the invoice.
- 7.2 Time for payment shall be of the essence.
- 7.3 Unless an invoice contains a manifest error, all invoices are deemed accepted by the Client 5 days after delivery to the Client.
- 7.4 The Client may not withhold payment of any invoice or other amount due to Orbits by reason of any right of set off or counterclaim which the Client may have, or allege to have, or for any reason whatever.

## 8. Insolvency

- 8.1 Where:
- (a) the Client fails to make payment of the Price; or
  - (b) commits any other breach of these Conditions;
  - (c) any distress or execution shall be levied upon any of the Client's goods;
  - (d) the Client offers to make any arrangement with its creditors;
  - (e) any bankruptcy petition is presented against the Client;
  - (f) the Client is unable to pay its debts as they fall due;
  - (g) if being a Limited Company any resolution or petition to wind up the Client (other than for the purposes of amalgamation or reconstruction without insolvency) shall be passed or presented;
  - (h) a receiver, administrator, administrative receiver, or manager shall be appointed over the whole or any part of the Client's business or assets;
  - (i) the Client shall suffer any analogous proceedings under foreign law;
- then all sums outstanding in respect of all Orders shall become payable immediately.
- 8.2 In addition, Orbits may, in its absolute discretion, and without prejudice to any other rights it may have:
- (a) Suspend all future supply of Goods and Services to the Client; and/or
  - (b) Terminate all Orders without liability on its part; and/or
  - (c) Charge interest at the rate of 2.5% per month on all sums outstanding;
  - (d) Exercise any of its rights pursuant to clause 9.

## 9. Retention of Title and Personal Property Securities Act 1999 (PPSA)

- 9.1 Goods shall be at the Client's risk from delivery.
- 9.2 Despite delivery having been made, property in the Goods shall not pass from Orbits until:
- (a) The Client has paid the Price plus GST in full; and
  - (b) No other sums whatever shall be due from the Client to the Orbits.
- 9.3 Where a security interest is created pursuant to the PPSA the Client agrees that the security interest in the Goods extends to the Proceeds (as defined in s16 PPSA) and acknowledges that the security interest will continue until Orbits gives the Client a final release.
- 9.4 Orbits may at its sole discretion and in such manner as it determines allocate payments made by the Client to outstanding amounts due in relation to any Goods supplied by it.
- 9.5 Until property passes, the Client agrees that it:
- (a) will keep the Goods insured to their full insurable value against loss or damage in Orbits's name as unpaid vendor;
  - (b) hold the Goods as bailee for, and in a fiduciary relationship with, Orbits;
  - (c) will keep the Goods separate and readily identifiable while the Goods are in its possession or control and not move them outside New Zealand;
  - (d) will not do or omit to do, or allow to be done, anything which could adversely affect the Goods or the security interest.

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- 9.6 If the Client defaults under these Terms or under any other payment obligation to Orbits :
- (a) Each security interest created in favour of Orbits will become immediately enforceable.
  - (b) Orbits may, at any time, by notice to the Client declare all or any part of the moneys owing to it to be due and payable immediately, upon demand or at a later date as it may specify.
  - (c) Orbits may:
    - (i) Enter the Client's premises where the Goods are stored to take possession of and either sell or retain the Goods;
    - (ii) Pay any expenses incurred in the exercise of any such powers out of the revenue from, or proceeds of realisation of, the Goods.
    - (iii) Appoint a receiver in respect of any Goods (without the Client's consent) and any receiver is authorised to do anything referred to in these Conditions and otherwise to exercise all rights and powers conferred on a receiver by law.
- 9.7 Orbits will not be liable for any damage caused to the Client or the Client's premises in exercising its rights under this clause.
- 9.8 The Client shall pay all of Orbits's costs, losses and other liabilities (including legal expenses on a solicitor-Client basis) incurred by it in connection with the exercise, or attempted exercise, of any right arising under this clause or the PPSA.
- 9.9 Nothing expressed in the other provisions of this clause limits or otherwise adversely affects Orbits's rights under the PPSA.
- 9.10 The Client waives its rights under sections 114(1)(a); 116; 120(2); 121; 125; 129; 131; 132; 133 and 134 of the PPSA and to receive a copy of the Verification Statement or a Financing Change Statement relating to the Security Interest.
- 9.11 The Client must give written notice to Orbits immediately in writing upon any change of name or any change in management or control. In the event of any change in management or control the Client agrees to make further credit support available upon being requested to do so.
- 9.12 If requested by Orbits, the Client must promptly do all things (including signing any document) and provide all information necessary to enable Orbits to perfect and maintain the perfection of any and each security interest granted to Orbits by the Client (including by registration of a Financing Statement).

## 10. Time for performance

- 10.1 Delivery of Goods shall be made to the Client's address on the Delivery Date. Goods may be delivered in advance of the Delivery Date upon the giving of reasonable notice to the Client. The Client shall make all arrangements to take delivery of the Goods whenever they are tendered for delivery.
- 10.2 The Orbits shall not be liable to the Client for late delivery or short delivery of the Goods.
- 10.3 Whilst Orbits will use its reasonable endeavours to ensure completion of any Order by the Delivery Date and achievement of agreed milestones by the dates agreed having regard to the availability of personnel, supplies, facilities and commitments to other clients, any dates quoted for the commencement or completion of an Order are estimates only and time shall not be of the essence.
- 10.4 Orbits may sub contract any part of the supply of Goods / Services.

## 11. Acceptance and rejection

- 11.1 The Client shall be deemed with acceptance of Goods 48 hours after delivery to the Client.
- 11.2 After acceptance, the Client shall not be entitled to reject Goods which are not in accordance with the Order.
- 11.3 Where the Client rejects any Goods, then the Client shall have no further rights whatever in respect of the supply to the Client of such Goods or a failure by Orbits to supply Goods which confirm with the Order.
- 11.4 When the Client accepts, or has been deemed to have accepted any Goods, then Orbits shall have no liability whatever to the Client in respect of those Goods.

## 12. Warranties and Liability

- 12.1 Orbits warrants that:
- (a) Goods supplied will, at the time of delivery, correspond to the description given by the Orbits and will be fit for the purpose specified in the Order;
  - (b) Services supplied will be performed by competent persons and will be carried out with reasonable care and skill.
- 12.2 Except where Orbits supplies Goods for household consumption, the conditions, warranties and guarantees set out in the Sale of Goods Act 1908, Consumer Guarantees Act 1993 or implied by common law are excluded from these Terms to the fullest extent permitted by law.
- 12.3 Orbits shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Orbits of these Conditions.
- 12.4 In the event of any breach of these Conditions by Orbits, the remedies of the Client shall be limited to damages and under no circumstances shall exceed the Price.

## 13. Force majeure

- 13.1 Neither party shall be liable for any default due to any act of God or civil disturbance, malicious damage, strike, lock-out, industrial action, fire, flood, drought, extreme weather conditions, power shortage, compliance with any law or governmental order, rule, regulation, direction or any other circumstance beyond the reasonable control of either party;
- 13.2 Each party shall give notice forthwith to the other upon becoming aware of a force majeure event, the notice to specify details of the circumstances giving rise to the force majeure event.

## 14. Notices

- 14.1 Any notice under, or in connection with these Conditions, should be in writing and should be served by first class post or by hand on a party, sent by recorded delivery to the trading address of the party, or at or to such other address that may be subsequently notified by one party to the other.

## 15. Privacy

- 15.1 Orbits may request and collect personal information about the Client before agreeing to supply Goods and/or Services in order to carry out such credit checks or references as it thinks appropriate. The failure to provide information requested by Orbits may result in an Order being declined or a contract subsequently being terminated by Orbits.
- 15.2 The Client has rights of access to personal information so collected, subject to the provisions of the Privacy Act 1993.
- 15.3 The Client agrees that its personal information may be used by Orbits to advise the Client of Orbits's other goods and services.
- 15.4 The Client authorises the disclosure of personal information held by any other party to Orbits regarding any previous sale agreements entered into by the Client and/or any information in relation to the financial position of the Client.
- 15.5 The Client agrees that Orbits may release to other parties information regarding this contract in order to enforce the terms and conditions of this contract.

## 16. Law of Contract

- 16.1 This contract shall be governed by the laws of New Zealand and the parties irrevocably accept the jurisdiction of the New Zealand Courts.