

## TERMS AND CONDITIONS

### 1. APPLICATION OF TERMS

- 1.1 These terms of trade apply to all of the supplies of goods and services from Custom Digital Limited ("We" or "Us") to the customer ("You"). These terms replace all earlier written or oral agreements and any terms and conditions contained in any other document used by you. Your acceptance of any goods or services from us indicates your continuing acceptance of these terms of trade.
- 1.2 You may have additional rights under the Consumers Guarantees Act 1993.

### 2. DELIVERY AND RISK

- 2.1 You are responsible for insurance and risk in the goods from the time they are delivered to the address nominated by you. Risk in the goods passes to you on delivery to that address.
- 2.2 You agree to pay all delivery costs. If we deliver any order in instalments, then each delivery is a separate contract on these terms.
- 2.3 You do not have the right to possess the goods until they are delivered to you or collected by you. If you ask us to deliver goods to another person or another person collects the goods on your behalf, that person takes possession of the goods for you as your agent, and you are still directly responsible to us on these terms.
- 2.4 All claims for missing components of goods or delivery damage must be made to us within five business days after the date of the delivery, or in the case of non-delivery, within two business days of the due date for delivery.
- 2.5 We will use our best efforts to deliver goods, or perform services, in a timely manner, but will not be liable to you for any loss or damage arising in any way from any delay in delivery or performance.

### 3. VARIATIONS

- 3.1 Any request for variations for any work which has already been quoted must be in writing. If we agree to the request for a variation, we may;
  - a. Make a corresponding adjustment to the quoted or estimated price;
  - b. Extend any time frame which has been given for completion of the work to accommodate the variations; and
  - c. Require evidence of your ability to pay for the variation.
- 3.2 You must make payment for all variations either on demand by us or at the next date that part of the price is due for payment.
- 3.3 If we have acted on an oral instruction from you and incurred extra expense in carrying out any variations, a fair price for the variation will be added to the contract price (including original mark up on the costs of carrying out such variation).

### 4. ORDERING GOODS AND SERVICES AND PRICES

- 4.1 Unless otherwise agreed in writing before you place an order, prices for goods or services are those in force at the date when you placed the order with us. Prices are subject to alteration without notice.
- 4.2 Unless we state otherwise in writing, quoted prices are in New Zealand dollars exclusive of GST, and are valid only for the time stated on any quotation given to you. If no time is stated on the quotation then it is valid on the date of quotation only.
- 4.3 Subject to clause 4.4 below, in the event that we have provided you with a quote for work or services to be undertaken by us on your behalf or for goods to be supplied, that quote is valid for a period of up to 30 days.
- 4.4 For the avoidance of doubt, in the event we commence work on your behalf or commence with the provision of goods to you and are subsequently delayed from completing that work or delayed from providing you with the goods due to a request on your behalf we are entitled to provide you with a new updated quote for the work or services to be undertaken. The new updated quote will be valid for a period of up to 30 days.
- 4.5 Where any quotation is based on an estimated quantity of equipment or materials, the price will be adjusted according to the actual amount of equipment or materials used.
- 4.6 You must pay goods and services tax and any other government duties, levies or taxes in respect of the goods or services.
- 4.7 Orders may be cancelled only if we agree in writing to the cancellation and the order has not already been processed by us. We may charge you a cancellation and or restocking fee.

### 5. PAYMENT AND PROPERTY

- 5.1 Unless we have agreed in writing to extend credit to you, you must pay for all goods in full before delivery or collection. We may require you to pay a deposit of up to 50% before we deliver or you can collect the goods. You must pay for the balance of the contract price within 20 days of the date of our invoice.
- 5.2 Where we have agreed in writing to extend credit to you, and unless otherwise advised to you in writing and signed by us, you must pay in full, without deduction or set-off, within 20 days of the date of invoice unless otherwise agreed in writing. Your payment is made only when funds have fully cleared through the banking system into our bank account.
- 5.3 If you have not paid in full by the due date, you will forfeit any discounts which we may have offered to you, and we may place you on stop credit.
- 5.4 If you have not paid in full within thirty days after the date of invoice, we may charge you interest

compounding monthly on the unpaid overdue balance at a rate of 5% per annum above the current overdraft rate charged by our bankers, and we may charge costs (including collection cost and legal cost on a solicitors/client basis) and suspend delivery or further goods or performance of our services until your account is paid in full.

- 5.5 Payments which you make to us will be applied first to any amount owing in respect of services, and then to payment for goods supplied by us.
- 5.6 Property and ownership of goods, whether in original form or incorporated in, comingled with, or attached to another product, will not pass to you but will remain with us until we receive payment in full of the purchase price of the goods and all other amounts that you owe us for any reason.
- 5.7 Until property passes to you, you shall hold any goods and proceeds of any kind in trust in a fiduciary capacity as bailee, and store them in a manner to enable them to be identified and cross referenced to the particular invoices.
- 5.8 You must not resell or part with possession of any goods that we supply for your use before you have paid for it in full, unless we have given you written consent.
- 5.9 If you have not paid for the goods, and we reasonably believe that the goods have been or will be destroyed, damaged, disposed of, sold, endangered, removed or concealed, or that you are or will be in breach of any parts of this clause 5, we or our agent may enter your premises without further notice to you or to any other person and remove any goods which are our property, using such force as is necessary and without prejudice to our rights.
- 5.10 Where you acquire goods from us for your personal, domestic or household use, nothing in this clause 5 will limit or derogate from rights you may have under the Credit Contracts and Consumer Finance Amendment Act 2014 and we will comply with that act in exercising our powers under this clause.
- 5.11 You indemnify us against all costs and claims in respect of our exercise of rights under this clause 5.
- 5.12 Returns shall only be accepted by us in accordance with our returns policy as advised to you from time to time.
- 5.13 Nothing in these terms of trade or the returns policy will limit or affect any rights you have under the Consumer Guarantees Act 1993 if you are a non- business consumer.

## 6. SECURITY INTEREST

- 6.1 If we already have a perfected security interest in the goods we supply to you together with their proceeds, that security interest is continued under these terms of trade. Otherwise, you grant us a security interest in the goods we supply to you. Our security interest covers the goods together with proceeds of all kinds to the value of all goods and services that we have supplied to you, whether or not those goods have become comingled into or mixed with other goods. The goods and services subject to the security interest will be described on our invoices.
- 6.2 You agree that you will do all acts necessary and provide us on request with all information that we require to register a financing statement over the goods and any proceeds of sale of those goods. You waive all rights to receive a copy of any verification statement of a financing statement.
- 6.3 You must advise us immediately in writing of any changes to information you have provided to us and at least 12 business days before changing your name, your company name, or your trading name.
- 6.4 You agree that you will supply us, within 2 business days of our written request, with copies of all security interests registered over your personal property, and you authorise us as your agent to request information from any secured party relating to any security interest which is held in any personal property which is held in or has been in your possession or control.
- 6.5 You must reimburse our reasonable cost, including legal costs on a solicitor/client basis, associated with the discharge or amendment of any financing statement registered by us, whether or not the change was initiated by you.
- 6.6 If we repossess goods under this agreement, we may retain those goods or dispose of them without notice to you or to any other person, and after deducting reasonable costs, we will credit any surplus by way of set-off against any sums owing to us. We shall not be obliged to issue you with a statement of account or to pay any person other than you or your receiver or liquidator any sum in excess of the total amount you owe us at the time we credit your account. We will not be obliged to reinstate this agreement or resupply any repossessed inventory or equipment to you.
- 6.7 You authorise us to search the Personal Property Security Register at any time for any information about you, or if you are a company, your parent or associated companies.

## 7. RETURNS and WARRANTIES

- 7.1 You acknowledge and agree that returns shall only be accepted by us in accordance with our returns policy as notified to you from time to time on our website or otherwise in writing, and that you may receive a credit for goods returned only if we have consented in writing.
- 7.2 However, nothing in these terms of trade or in the returns policy will limit or affect any rights that a non-business customer may have under the Consumer Guarantees Act 1993.
- 7.3 If any goods supplied by us are subject to a manufacturer's warranty, we will pass on to you the benefits of those warranties, without being directly liable to you under those warranties. You are responsible for any costs incurred in returning goods to the manufacturer or to us under warranty and you may be liable for additional costs, such as freight. If you do require us to do anything related to the warranty claim, you must pay our service and call out charges. We may refuse to assist with warranties if any sum that you owe us for any reason is overdue.
- 7.4 Any warranty may be avoided by unreasonable use, damage or misuse of equipment, problems

caused by the misuse of software or faults in the software, damage after the goods have left our possession, negligent installation or operation (unless the goods were installed by us), inadequate packaging, cleaning and maintenance, unauthorised repairs, modifications, or the use or parts, hardware or software or consumables not supplied by us. If the goods or services that we supply you are not of a kind ordinarily acquired for personal household or domestic use or consumption, or if you acquire, or hold yourself out as acquiring, our goods or services for the purposes of a business, the provisions of the Consumer Guarantees Act 1993 and the conditions, warranties and guarantees set out in the Sale of Goods Act 1908, or which are implied by common law, do not apply and are excluded from these terms of trade.

## **8. LIMITATION OF LIABILITY**

- 8.1 We will not be liable for any losses of any kind or any delay in supplying goods or services which are caused in whole or in part by circumstances beyond our reasonable control.
- 8.2 Subject to the preceding clauses 8.1, our liability shall be limited to the value of defective goods, software or services supplied, and none of us, our employees, contractors or agents or any of their materials or components, or any supplies or services, will be liable to you for loss or damage of any kind however that loss or damage is caused or arises. This limitation of liability includes, but is not limited to costs (including costs of returning goods to us or returning to manufacturer), indirect or consequential loss, loss of contracts, loss of products, damage caused by or arising from delays in delivery, or faulty or delayed installation, unreasonable use, negligence (including a failure to do something that should have been done or to prevent something from happening), faulty specifications in design, or faulty materials or components of the goods.

## **9. PERSONAL INFORMATION**

- 9.1 We may use any personal information that you supply for credit, administration, service and marketing purposes. You have the right of access to, and to ask for correction of, your personal information.
- 9.2 You authorise any person or company to provide us with any information we may require in response to your application for credit and/or other enquiries, and you authorise us to search the Personal Property Securities Register for any information about you or (in the case of a company) your parent or associated companies.

## **10. GENERAL CONDITIONS**

- 10.1 We may change these terms of trade from time to time by notice to you in writing which may be by email.
- 10.2 If we fail to enforce any terms or to exercise any right under these terms of trade at any time, we have not waived that right.
- 10.3 You may not assign or sub-contract any of your rights or obligations under these terms of trade.
- 10.4 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.
- 10.5 Any agreement between us is governed by the laws of New Zealand.
- 10.6 Any dispute is subject to the exclusive jurisdiction of the New Zealand Courts.