

- 1. Definitions**
1.1 In these terms and conditions:
Contract means these Terms together with any quotation provided by the Supplier, and every document evidencing or describing, whether by item or kind or otherwise, the Goods and/or the Services and includes the provisions of any credit application form, Supplier order form or any other confirmation (written or oral) of an order (where the Contract arises from acceptance by Supplier of an order by Customer).
Customer means the person to whom the Goods and/or Services are to be supplied.
Customer's Representative means each employee, agent, Related Company or contractor of the Customer.
Goods means any goods or property supplied by Supplier to Customer or any Customer's Representative.
PPSA means the Personal Properties Securities Act 1999.
Price in respect of any Goods or Services at any time means:
(a) if Supplier has provided a quotation in writing to Customer in respect of Goods and/or Services, the price specified in that quotation, including any variation to any such quotation agreed to in writing by Supplier; or
(b) if Supplier has not provided a quotation to the Customer in respect of the Goods and/or Services, Supplier's standard price at that time for the relevant Goods or Services (as notified by the Supplier) or such other price advised by Supplier to Customer at that time (and may include, with respect to Services, a reference to the total labour rates and other costs associated with undertaking the Services).
Property means the property, premises, site, or location where the Services (if any) are to be provided by Supplier for or on behalf of Customer.
Related Company has the meaning in section 2(3) of the Companies Act 1993 (read as if the expression "company" in that subsection included any body corporate).
Services means any services supplied by Supplier to Customer or Customer's Representative (excluding any services governed by a separate maintenance agreement between the Supplier and Customer or Customer's Representative).
Supplier means Control Systems Limited.
Terms means the terms and conditions of supply contained in this document.
A reference to "Supplier" includes any Related Company of the Supplier (and any trading entity of Supplier) which supplies Goods and/or Services to the Customer or a Customer's Representative.
A reference to a person includes a corporation, association, firm, company, partnership, individual or government or local body.
The terms "after acquired property", "at risk", "inventory", "lease", "perfected", "proceeds", "purchase money security interest", "rights", "security interest" and "sell" have the meanings given to them under, or in the context of, the PPSA.
- 2. Terms**
2.1 These Terms apply in respect of every supply of Goods and/or Services by Supplier or any Related Company of Supplier to Customer or any Customer's Representative, and are deemed incorporated into each Contract.
2.2 The Terms are paramount and, to the extent there is any conflict between the Terms and any invoice or other document relating to the supply of Goods and/or Services (including any document produced by the Customer) the Terms will prevail.
2.3 Customer will become bound by these Terms as soon as:
2.3.1 Customer or a Customer's Representative signs or agrees to these Terms;
2.3.2 Customer or a Customer's Representative orders Goods or Services; or
2.3.3 Supplier supplies Goods and/or Services to a Customer or a Customer's Representative.
2.4 Supplier may decline any order for Goods and/or Services in its sole discretion.
- 3. Price and quotes**
3.1 Customer shall pay to the Supplier in respect of all Goods and Services supplied by Supplier to Customer or any Customer's Representative the Price applicable to such Goods and Services.
3.2 Unless specified otherwise in the Contract, all Prices are exclusive of freight, insurance, installation, customs duty and any other costs; and all applicable taxes (goods and services tax) assessed or levied in connection with the supply of the Goods and/or Services.
3.3 All quotes are provided strictly on the following basis:
3.3.1 that the work to be completed to which the quote relates will proceed smoothly and there are no unforeseen difficulties with the work;
3.3.2 that where the quote is supplied without the Supplier viewing the Property, the quote is subject to the Supplier viewing the Property;
3.3.3 if additional work is required (over and above that specified in the quote), then the Supplier may at its option charge for such additional Goods or Services in accordance with these Terms.
- 4. Payment**
4.1 Payment for Goods and Services, including any progress payments charged by the Supplier and any other charges associated with such supply, is due on the 20th of the month following the date of invoice, unless otherwise specified in the Contract between Supplier and Customer or Customer's Representative.
4.2 Payment shall be made in cleared funds and Customer shall not be entitled to withhold payment or make any set off or deduction from the Price of Goods or Services supplied or from any other payment due by Customer.
4.3 If Supplier at any time deems the credit of Customer to be unsatisfactory, Supplier may require Customer to make an immediate payment in cash or to grant security for payment satisfactory to Supplier and may suspend performance of its obligations under any Contract until that cash payment or security is provided. All costs and expenses incurred by Supplier as a result of such suspension shall be payable by Customer.
4.4 Interest at 48% per annum (4% per Month) calculated on a daily basis shall be payable on any moneys outstanding by Customer to Supplier from the date payment is due until the date payment is received by Supplier but without prejudice to Supplier's other rights and remedies in respect of non-payment or late payment. Such interest shall be payable on demand by Supplier.
- 5. Delivery**
5.1 Notwithstanding any obligation on Supplier to carry out Services (if any), delivery of Goods shall be made at the place indicated in the relevant Contract or, if no place is indicated in the Contract, delivery shall be made at Supplier's premises.
5.2 Any quotations relating to the time for delivery of Goods or completion of Services or any part thereof are estimates only and not commitments. Supplier shall not be bound by, or liable for a failure to comply with, any such quotations.
5.3 Supplier may deliver Goods by instalments. If Customer fails to pay for an instalment on the due date, Supplier may suspend deliveries of the other instalments and the provision of any Services.
- 6. Installation**
6.1 Where a Contract provides for installation of Goods (or other Services) to be carried out by Supplier, Customer shall:
6.1.1 provide suitable access to the Property in all weather conditions for vehicles and equipment that Supplier will need in carrying out the Services;
6.1.2 ensure that the Property is in a proper condition for the installation;
6.1.3 provide all necessary services and amenities to enable Supplier to carry out the Services; and
6.1.4 maintain adequate insurance against loss, damage, costs and expenses which may be suffered or incurred as a result of or during the installation.
6.2 Without limiting clause 6.1, where a Contract provides for installation Services to be provided by Supplier where the Goods being installed are subject to, and/or their efficacy is dependent on, certain pre-installation specification requirements being met, the Customer shall be solely responsible for ensuring that all such pre-installation specifications have been met (prior to installation by Supplier) and shall request
- details of such pre-installation specifications from the Supplier or manufacturer of the Goods (as applicable). Supplier shall have no liability to Customer (or at all) where the Customer (or any other person) suffers loss or damage as a consequence of any pre-installation specifications not having been met prior to installation of Goods by Supplier, whether Supplier has been negligent or not.
- 7. Risk and security interest**
7.1 Risk of any loss, damage or deterioration of or to the Goods shall be borne by Customer from the date of delivery of the Goods in accordance with clause 5.1.
7.2 Risk of any damage to the Goods arising out of any installation or other Services carried out at the Property shall be borne by Customer except damage caused by the negligence of Supplier, its employees, agents or contractors in carrying out the Services, which damage shall be the responsibility of Supplier.
7.3 Customer grants a security interest to Supplier in each and every part of the Goods as security for payment for that part and of each other part or parts of the Goods and for any other amounts owing by Customer to Supplier from time to time, and for the performance by Customer of all Customer's other obligations to Supplier from time to time ("Customers indebtedness and obligations"). For the purposes of section 36(1)(b) of the PPSA, and to ensure maximum benefit and protection for Supplier by virtue of section 36(1)(b)(iii) of the PPSA, Customer confirms and agrees that Customer intends to and does grant Supplier, as security for Customer's indebtedness and obligations, a security interest in all of Customer's present and after-acquired property except only for any such property which is or comprises items or kinds of personal property ("excepted property"):
7.3.1 in or to which Customer has rights; and
7.3.2 which has not been supplied by Supplier to Customer, other than any excepted property which is or compromises proceeds of that present and after acquired property which has been supplied by Supplier to Customer.
7.4 Customer shall do anything that Supplier reasonably requires to ensure Supplier has a perfected security interest in all the Goods and purchase money security interest in each part of the Goods to the extent of the purchase price for that part and Supplier may allocate amounts received from Customer in any manner Supplier determines, including in any manner required to preserve any purchase money security interest it has in any Goods.
7.5 Customer shall reimburse Supplier for all costs and/or expenses incurred or payable by Supplier in relation to registering, maintaining or releasing any financing statement in respect of any security interest under the Contract.
7.6 Customer waives the right to receive a copy of the verification statement confirming registration of a financing statement or financing charge statement relating to the security interest.
7.7 Customer:
7.7.1 agrees that if, at any relevant time, Supplier does not at that time have priority over all other secured parties in respect of any part of the Goods, then Customer and Supplier will, for the purposes of section 109(1) of the PPSA, be deemed, in accordance with the entitlement to do so under section 107(1) of the PPSA, to have contracted out of that section but specifically on the basis that, as between them and only to the extent of that part of the Goods and the operation and application of the PPSA, that section 109(1) (but amended only by deletion of the words "with priority over all secured parties") is reinstated and contracted back into; and
7.7.2 agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to any Contract, or the security under any Contract, and waives Customer's rights under sections 121, 125, 129, 131 and 132 of the PPSA.
- 8. Cancellation**
8.1 Any Contract between Supplier and Customer or Customer's Representative can only be terminated with the consent of Supplier and on such terms as deemed satisfactory to Supplier (which will include compensation for any costs to Supplier, or loss suffered by Supplier (including all expenses and labour) caused directly or indirectly by cancellation by Customer or Customer's Representative).
- 9. Warranty and returns**
9.1 Supplier shall repair or make good any defects in materials or workmanship (relating to the Goods or Services supplied under a Contract) arising within the period specified in the Contract or if no period is specified, within one month from the date of delivery of the Goods or completion of the Services (as applicable) or as otherwise required by law. Supplier shall not be liable to carry out any such remedial work unless notice of the claim is received by Supplier within 5 working days after the defect is discovered by Customer, nor shall any claim be accepted:
9.1.1 if any attempt to repair the defective Goods or Services is made by any person not authorised by Supplier to effect such repairs;
9.1.2 if the Goods have been modified or dismantled without the prior approval of Supplier; or
9.1.3 if the defective Goods have not been stored, maintained or used in the proper manner.
Supplier shall not be obliged to carry out any work nor be under any liability under this clause for so long as Customer is in default in relation to any obligation (including as to payment) under any Contract.
9.2 If Supplier is required under these Terms or by law to repair any defective Goods, the repair shall be undertaken at such place as Supplier may specify and Customer shall be responsible for delivery of the defective Goods to and from such place of repair.
9.3 If Goods or any components thereof are not manufactured by Supplier, clause 9.1 shall not apply to such Goods or components and Supplier shall not be liable in respect of any defects in such Goods or components. Where the manufacturer or supplier of such Goods or components provides any warranty, Supplier (to the extent it is able to do so) shall make such warranty available to Customer.
9.4 Supplier may, in its absolute discretion, accept a request by Customer to return Goods to Supplier for credit, exchange or refund and if Supplier accepts any such request, such acceptance shall be conditional on Customer complying with any terms and conditions as Supplier may apply in respect of that return.
- 10. Default**
10.1 If Customer:
10.1.1 defaults in the due payment of any moneys payable to Supplier, or in the due performance of any of its other obligations, whether under any Contract or otherwise;
10.1.2 commits any act of bankruptcy, enters into any composition or arrangement with creditors or (in the case of a company) does any act which would render it liable to be wound up or if a resolution is passed or proceedings commenced for the winding up of Customer or if a receiver is appointed in respect of all or any of its assets;
10.1.3 if any Goods are at risk; or
10.1.4 any other event which Supplier considers may materially adversely affect the ability of Customer to perform any of its obligations under any Contract,
Supplier may, without prejudice to any other rights or remedies may, at its option:
10.1.5 require all moneys outstanding to be immediately due and payable and enforce the security interest created by clause 7;
10.1.6 require security for Customer's obligations to Supplier's satisfaction;
10.1.7 suspend all Contracts in which case Supplier shall not be obliged to perform any of its obligations under any Contract during the period of suspension (including delivery of any Goods). Any suspension shall not prevent Supplier from terminating any Contract during the period of suspension;
10.1.8 enter upon Customer's premises where the Goods are situated and take possession of and remove the same without being responsible for any damage caused, and resell those Goods and apply the proceeds in satisfaction or reduction of amounts owing by Customer; and/or
10.1.9 terminate all or any Contracts.
10.2 Customer shall pay all costs incurred by Supplier in the recovery or attempted recovery of outstanding moneys and enforcement of these Terms, including all legal fees.
- 10.3 Payments shall be applied in reduction of amounts owing by Customer in such order as Supplier determines.
- 11. Liability**
11.1 The total liability of Supplier for any loss arising from any defect or non-compliance of the Goods and/or Services or any other breach by Supplier of its obligations under or in connection with any Contract will not in any circumstances exceed the Price for the Goods and/or Services in respect of which liability arises.
11.2 The Supplier is not liable for any loss, including but not limited to, loss of profits, consequential loss or indirect loss, arising from any defect or non-operation of the Suppliers hosted Software As A Service platform that the Customer chooses to subscribe to.
11.3 The Customer acknowledges that the Supplier will make every effort to maintain its online / hosted services in a fully operational condition to facilitate the Customers best outcome from the Suppliers hosted Software As A Service platform.
11.4 Supplier will not be liable for any loss of profits, or any consequential, indirect or special damage or damage or injury of any kind suffered by Customer or any Customer's Representatives.
11.5 Customer will indemnify Supplier against:
11.5.1 any claim by Customer's employees, contractors, agents or other persons in respect of any loss, damage or injury arising from any defect in or non-compliance of any Goods and/or Services or in respect to any other matter whatsoever; and
11.5.2 any liability or cost incurred by Supplier as a result of any breach by Customer of any provision of these Terms or any unauthorised use of the Goods.
- 11.6 To the fullest extent permissible at law:
11.6.1 any warranties, conditions, representations or guarantees whether implied by statute, common law or custom of the trade or otherwise, including implied warranties, guarantees or conditions of merchantability and/or fitness for a particular purpose, are excluded.
11.6.2 Supplier shall have no liability to Customer or any Customer's Representative for anything, other than a breach by Supplier of an express provision of these Terms.
- 11.7 Customer agrees that nothing in any Contract is intended to have the effect of contracting out of the provisions of the Consumer Guarantees Act 1993 ("CGA") except to the extent permitted by the CGA and all provisions of any Contract shall be modified to the extent necessary to give effect to that intention.
- 11.8 Customer shall not, in relation to the supply by Customer of the Goods, give or make any undertaking, assertion or representation in relation to the Goods without the prior approval in writing of the Supplier.
- 12. Guarantee and indemnity**
12.1 If Customer is a company, the Supplier may, in its sole discretion and at any time during the term of the Contract, require a personal guarantee on the terms set out in clause 12.2 below from any one or more of the directors of the Customer and the Customer shall procure the entering into such guarantee by the relevant director(s).
12.2 The guarantor(s) of Customer jointly and severally unconditionally guarantee the due and punctual payment by Customer of all outstanding moneys and agree to keep Supplier fully indemnified against all damages, losses, costs and expenses arising from any failure of the Customer to pay the moneys hereby guaranteed. As between the guarantor(s) and Supplier the liability of the guarantor(s) shall be deemed to be that of principal debtor.
- 13. General**
13.1 If any provision of any Contract is or becomes unenforceable, illegal or invalid for any reason it shall be deemed to be severed from the Contract without affecting the validity of the remainder of the Contract and shall not affect the enforceability, legality or application of any other provision of the Contract.
13.2 Any notice to be given pursuant to the terms of any Contract shall be in writing addressed to the party to whom it is given and left at or sent by e-mail, facsimile transmission or pre-paid post to the address of such party (as notified by the parties from time to time) and shall be deemed to be served on the day so left or transmitted by e-mail or facsimile machine or on the fifth day after it is so posted.
13.3 All intellectual property rights in the Goods or otherwise arising out of the performance of the Services (including any designs, specifications or documents produced by Supplier in connection with the Services) are and shall remain the property of Supplier.
13.4 Neither party ("Affected Party") will be liable for any delay or for any failure to fulfil its obligations under this agreement (except with respect to any payment obligations) if the failure or delay arises directly or indirectly from or as a consequence of any cause or circumstance beyond the reasonable control of the Affected Party
13.5 Customer shall not assign or purport to assign (whether in whole or in part) its rights or interests under any Contract without the prior written consent of Supplier.
13.6 Customer authorises Supplier to contact any credit agency, referee or any other source in order to check, exchange or provide information in relation to Customer and Customer authorises each such source to provide to Supplier any information about Customer. If Customer is a natural person the Privacy Act 1993 entitles Customer to have access to personal information held by Supplier about Customer and to request such information.
13.7 The parties agree to use their best endeavours to promptly resolve any dispute or difference between them. Supplier may, at its option, require Customer to submit to mediation with assistance of a qualified mediator.
13.8 Each Contract is governed by New Zealand law and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.
13.9 Supplier may vary these Terms at any time by notice in writing to Customer. Any such variation shall take effect from acceptance of the first order for Goods and/or Services following a notice of variation being given to Customer.
13.10 Nothing in the making or performance of a Contract creates the relationship of partnership, joint venture or agent or principal between the parties. The relationship between the parties is the relationship of independent parties contracting for goods and services.
13.11 To the extent any confidential information is provided by Supplier to Customer, Customer must keep that information confidential.
13.12 Customer acknowledges that it has received a copy of these Terms and in particular that each Contract constitutes a "security agreement" for the purposes of the PPSA, and that Supplier may register a financing statement.
13.13 The failure of Supplier to enforce any provision of these Terms shall not be treated as a waiver of that provision, nor shall it affect Supplier's future right to enforce that provision.