

# Terms Of Trade

## 1. Definitions

- 1.1 "SSIT" means Silver Service IT Limited, its successors and assigns or any person acting on behalf of and with the authority of SSIT Limited.
- 1.2 "Client" means the person/s or any person acting on behalf of and with the authority of the Client requesting SSIT to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- if there is more than one Client, is a reference to each Client jointly and severally; and
  - if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
  - includes the Client's executors, administrators, successors and permitted assigns.
- 1.3 "Services" means all Goods (which includes any goods, hardware, files, information, printed or virtual material, data or software) or Services (which includes any installation and/or repair of Goods or components, advice or recommendations, support services, assessment and treatment planning, reporting, technical service and support, analysis, training, and project management or service sourcing) supplied by SSIT to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Price" shall mean the cost of the Services (plus any Goods and Services Tax ("GST") where applicable) as agreed between SSIT and the Client subject to clause 7 of this Agreement.
- 1.5 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Agreement, either party's Intellectual Property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information and pricing details.
- 1.6 "Agreement" means this Agreement, including these terms and conditions, any schedule and any other contract expressed to be supplemental to this Agreement and all other amendments to such a document.

## 2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by this Agreement if the Client places an order for, or accepts, Services provided by SSIT.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistency with any other document or contract between the Client and SSIT.
- 2.3 None of SSIT's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of SSIT in writing, nor is SSIT bound by any such unauthorised statements.
- 2.4 Once accepted by the Client, SSIT's quotation shall be deemed to interpret correctly the Client's instructions, whether written or verbal. Where verbal instructions only are received from the Client, SSIT shall not be responsible for errors or omissions due to oversight or misinterpretation of those instructions.
- 2.5 This Agreement constitutes the entire agreement between SSIT and the Client, and the Client hereby acknowledges that no reliance is placed on any representation made by SSIT, but not embodied in this Agreement.
- 2.6 Any advice, recommendations, information, assistance or service provided by SSIT in relation to Services provided is given in good faith, is based on information provided to SSIT, and SSIT's own knowledge, and experience. Whilst it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Services, human error is possible under these circumstances, and SSIT shall make all effort to offer the best solution to the Client.
- 2.7 The Services supplied under this Agreement do not include, unless otherwise specified in writing by SSIT: travel and accommodation required to provide authorised on-site Services, courier and freight charges and any direct costs other than SSIT's personnel's time and ordinary overheads;
- products and services supplied by a third party. Where the provision of Services requires SSIT to obtain products and/or services from a third party, this Agreement shall incorporate, and shall be subject to, the conditions of supply of such products and/or services to SSIT, and the Client shall be liable for the cost in full including SSIT's margin of such products and/or services;
  - support of other software, accessories, attachments, machines, hardware, peripherals, systems or other devices not supplied by SSIT, or support which is rendered more difficult because of any

changes, alternation, addition, modifications or variations to the Services, the operating system or the operating environment;

- c. rectification of lost or corrupted data arising from any reason other than the negligence, fault or omission of SSIT;
- d. attendance to faults caused by the Client's use of the Goods, or diagnosis or rectification of problems not associated with the Goods;
- e. loss or damage caused directly or indirectly by operator error or omission and over which SSIT has no control.

2.8 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017, or any other applicable provisions of that Act or any Regulations referred to in that Act.

2.9 These terms and conditions are meant to be read in conjunction with the Terms and Conditions posted on SSIT's website. If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail.

2.10 These terms and conditions may be meant to be read in conjunction with SSIT's Hire Form, and:

- a. where the context so permits, the terms 'Goods' or 'Services' shall include any supply of Equipment, as defined therein; and
- b. if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.

2.11 A minimum callout fee shall be applicable from the time that SSIT's technician has been dispatched from SSIT's premises.

### **3. Errors and Omissions**

3.1 The Client acknowledges and accepts that SSIT shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):

- a. resulting from an inadvertent mistake made by SSIT in the formation and/or administration of this Agreement; and/or
- b. contained in/omitted from any literature (hard copy and/or electronic) supplied by SSIT in respect of the Services.

3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of SSIT; the Client shall not be entitled to treat this Agreement as repudiated nor render it invalid.

### **4. Change in Control**

4.1 The Client shall give SSIT not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by SSIT as a result of the Client's failure to comply with this clause.

### **5. Authorised Representatives**

5.1 The Client acknowledges that SSIT shall (for the duration of the Services) liaise directly with one (1) authorised representative, and that once introduced as such to SSIT, that person shall have the full authority of the Client to order any Services and/or to request any variation thereto on the Client's behalf. The Client accepts that they will be solely liable to SSIT for all additional costs incurred by SSIT (including SSIT's profit margin) in providing any Services or variation/s requested thereto by the Client's duly authorised representative.

### **6. Online Ordering**

6.1 The Client acknowledges and agrees that:

- a. SSIT does not guarantee the websites performance or availability of any of its Goods; and
- b. on-line ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades; and
- c. there are inherent hazards in electronic distribution and as such SSIT cannot warrant against delays or errors in transmitting data between the Client and SSIT including orders, and you agree that to the maximum extent permitted by law, SSIT will not be liable for any losses which the Client suffers as a result of online-ordering not being available or for delays or errors in transmitting orders.

6.2 SSIT reserves the right to terminate your order if it learns that you have provided false or misleading information, interfered with other users or the administration of SSIT's Services, or violated these terms and conditions.

## **7. Price and Payment**

7.1 At SSIT's sole discretion the Price shall be either:

- a. as indicated on any invoice provided by SSIT to the Client; or
- b. the Price as at the date of delivery of the Goods according to SSIT's current price list; or
- c. SSIT's quoted price (subject to clause 7.2(b)) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.

7.2 Additional and/or Varied Services:

- a. SSIT agrees that there will be no charge in the preparation of this Agreement, which may include Client discussions, project scoping, research, testing and business analysis, etc. However, in some instances the aforementioned services may be charged to the Client additionally (at SSIT's sole discretion).
- b. SSIT reserves the right to amend the Price:
  - (i) where there is any variation to the accepted plan of scheduled Services, or instructions/specifications, which will be charged for on the basis of SSIT's standard hourly rates (and double such rate for any Services provided outside SSIT's normal business hours); or
  - (ii) in the event of increases to SSIT in the cost of labour or materials (including the increase in overseas transactions as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond SSIT's control.
- c. Variations will be charged for on the basis of SSIT's quotation, and will be detailed in writing, and shown as variations on SSIT's invoice. The Client shall be required to respond to any variation submitted by SSIT within ten (10) working days. Failure to do so will entitle SSIT to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.

7.3 At SSIT's sole discretion, a deposit of fifty percent (50%) of the Price may be required upon request by SSIT.

7.4 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by SSIT, which may be:

- a. on completion of the Services; or
- b. by way of instalments/progress payments in accordance with SSIT's payment schedule;
- c. the date specified on any invoice or other form as being the date for payment; or
- d. failing any notice to the contrary, the date which is twenty (20) days following the end of the month of the date of any invoice/s and/or statement furnished to the Client by SSIT.

7.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and SSIT.

7.6 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 SSIT nor to withhold payment of any invoice because part of that invoice is in dispute. Any invoice query/dispute will not be recognised if notified outside of time period stated in clause 7.4(d).

7.7 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to SSIT an amount equal to any GST SSIT must pay for any supply of Services by SSIT under this, or any other, Agreement. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

7.8 Receipt by SSIT 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 SSIT's ownership or rights in respect of the Services, and this Agreement, shall continue.

## **8. Terms of Use**

8.1 When the Client uses the Services, the Client must:

- a. comply with all laws, all directors by a regulator, all notices issued by authorisation of, or under, law (e.g. Copyright Act 1994) and reasonable directions by SSIT; and
- b. keep all account information, password, data and Equipment confidential and secure. The Client remains responsible for any use or misuse of such; and
- c. follow any reasonable instructions provided by SSIT in relation to the Services; and

- d. access and use the Services solely in accordance with these terms and conditions and any reasonable instructions provided by SSIT; and
- e. employ back-up power and surge protectors at the premises.

8.2 The Client must not:

- a. use, or attempt to use, or permit another person to use or attempt to use, the Services:
  - (i) so as to cause offence, to defame, abuse, communicate obscenities, menace or annoy;
  - (ii) for any purpose or activity of an illegal or fraudulent nature in any jurisdiction, including damaging any property or injuring or killing any person, to breach the security of any computer network (hacking), to breach any persons privacy, or to distribute unsolicited software or junk mail;
  - (iii) for advertising purposes without SSIT's express written consent;
  - (iv) to breach any of the intellectual property rights held by SSIT or any third party, which exist with the Services or any supplied Equipment (including, but not limited to, copying, distributing, selling, renting, leasing or adapting any of the Services) or any property accessible by the Services, with the exception of making one (1) back-up copy of any supplied software or transferring of any supplied software to the hard disk drive of one (1) computer;
  - (v) to transmit, publish or communicate materials which is defamatory, offensive, abusive, indecent, menacing or unwanted;
  - (vi) to expose SSIT to liability (including any claims for damages);
  - (vii) in any way which damages, interferes with or interrupts the Services, or a third party service provider's network used to provide the Services; or
  - (viii) to intercept or attempt to intercept any communication not otherwise intended for the Client.

8.3 If, in SSIT's opinion, the Services are being used by anyone in breach of these terms and conditions (including clause 8) or internet etiquette, SSIT may:

- b. refuse to post such infringing information to public areas (including, but not limited to, bulletin boards, databases or software libraries);
- c. remove, review or edit such infringing information from any computer on SSIT's network, with the exception of private electronic messages;
- d. discontinue any infringing communication;
- e. suspend the Services indefinitely, or for a specific period;
- f. terminate the Services, and refuse to provide the Services to the Client, or the Client's associates, in the future;
- g. inform appropriate government and regulatory authorities of suspected illegal or infringing conduct.

8.4 The Client authorise SSIT to delete without notice or liability any information or materials found on the Equipment (or hardware controlled by SSIT) that is found to be of an obscene nature, unauthorised, unlawful, uncollected for an excessive period of time or excessive in volume.

## 9. Provision of the Services and Delivery of the Goods

9.1 SSIT may provide the Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.

9.2 Any time specified by SSIT for provision of the Services is an estimate only and SSIT will not be liable for any loss or damage incurred by the Client as a result of provision being late. However both parties agree that they shall make every endeavour to enable the Services to be provided at the time and place as was arranged between both parties. In the event that SSIT is unable to provide the Services as agreed solely due to any action or inaction of the Client, then SSIT shall be entitled to:

- a. charge the Client additionally for re-providing the Services at a later time and date; or
- b. subject to clause 21.4(b), terminate this Agreement.

9.3 Delivery ("Delivery") of the Goods is taken to occur at the time that:

- a. the Client or the Client's nominated carrier takes possession of the Goods at SSIT's address; or
- b. SSIT (or SSIT's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address; and
- c. at SSIT's sole discretion, the cost of Delivery is in addition to the Price.

9.4 Subject to the any agreed service levels and these terms and conditions, SSIT will use reasonable care and skills in providing the Services to ensure the Client receives continual, uninterrupted and fault-free Services for the duration of this Agreement. However, given the nature of telecommunications systems, including SSIT's reliance on systems, hardware or software and services SSIT does not own or control (including third party service providers), SSIT cannot guarantee the availability of the Services at all times, which shall be subject to regularly scheduled maintenance cycles, and any events/circumstances beyond SSIT's control. Any failure or

delay by SSIT to provide the Services (promptly or at all) due to circumstances beyond SSIT's control shall not itself constitute a default by SSIT under this Agreement. Only the Services explicitly included in this Agreement will be provided and supported, all other services offered are specifically excluded. Where necessary for commercial, technical or other reasons:

- a. a network or third party service provider connected to this Agreement may suspend or terminate its connection to any services provided; and
- b. those services may suspend or terminate their connection to another network or service provider.

9.5 SSIT has no responsibility:

- a. to provide training in the use of the Services and/or related applications; or
- b. for any failure in providing the Services where attributable to a fault in the Client's phone line, and no credit or refund in relation to the Price will be considered for such outages.

9.6 No guarantee is given by SSIT as to the availability (at any or all times) of the Services (including stability and connection speeds of data transmitted when using the Services) as advertised, as such may vary depending on the service kind and delivery infrastructure, including:

- a. whether the Client are located in a coverage area;
- b. the number of users sharing the network;
- c. the computer hardware and software the Client uses;
- d. general activity on the internet;
- e. speed and capacity of the server being accessed.

9.7 In the event during the course of the Services there is any reduction in speed and/or coverage imposed from a third party service provider that subsequently effects the Client's operations, the Client will be entitled to terminate the Agreement under clause 21 without incurring any penalty, where such changes are beyond the control of SSIT. However, SSIT will in all cases firstly attempt to resolve such occurrences with assisting in sourcing an alternative third party service provider to ensure limited disruption.

9.8 Whilst SSIT may supply Equipment in order to facilitate the provision of Services (e.g. routers, etc.), subsequent replacement of such should any failure thereof occur beyond its warranty period is the Client's responsibility and at the Client's cost.

9.9 SSIT may allocate the Client a domain name, or change the Client's existing domain name to one of SSIT's choice. The Client shall have no intellectual property rights in the domain name, email address, User ID or password allocated by SSIT, and these are not transferable to the Client once the Services are terminated.

## **10. Fault Escalation Responsibilities**

10.1 The Client is responsible for notifying SSIT of a service fault as quickly as possible.

10.2 SSIT is responsible for trouble-shooting the source of the service fault, and either rectifying the fault in a timely fashion (i.e. if the fault is within SSIT's network) or escalating the fault to the local fibre company (i.e. if the fault is within their network).

## **11. Fault Restoration**

11.1 SSIT's network personnel are available between 7:00am and 7:00pm and have service targets for providing an update to the Client's fault enquiry within a maximum of sixty (60) minutes of the fault being notified by the Client to SSIT. Calls logged outside normal business hours will be attended to on the next business day. We reserve the right to charge support fees inside normal business hours where a fault has been notified and investigated and cannot be traced to either SSIT's or the service provider's network. If the fault is found to be on SSIT's or the service provider's network, no support fees will apply.

11.2 Support outside SSIT's normal business hours is available via an afterhours voice service on 0800 2 ASSIST. Please note, whilst audit reports are responded to as soon as practically possible, other support queries won't be dealt with until the next business day.

## **12. Client's Responsibilities**

12.1 It is the Client's responsibility to:

provide all necessary services and amenities to enable SSIT to provide the Services;

- a. ensure that the premises are structurally sound and in a proper condition for the Services to proceed;
- b. provide safe and secure site storage;
- c. obtain all permits and consents as may be required for the Services;
- d. make the premises available on the agreed date/s and time/s. If installation is interrupted by the failure of the Client to adhere to the schedule of Services agreed to between SSIT and the Client, any additional costs will be invoiced to the Client as an extra;

- e. ensure that SSIT has clear and free access to the nominated address at all times to enable them to provide the Services. SSIT shall not be liable for any loss or damage to the address, unless due to the negligence of SSIT;
- f. liaise with the third parties to ensure that all prerequisite work has been completed prior to the provision of the Services;
- g. to ensure the Goods are tested and maintained to full operational condition, and to report any faults or abnormalities to SSIT immediately; and
- h. where applicable, provide passwords, access codes or other details as required.

12.2 The Client acknowledges and agrees that the Client is (for all purposes) solely responsible for the migration of all files and data (regardless of their format). SSIT shall not be held responsible or liable for any loss, corruption, or deletion of files or data (including, but not limited to the software) resulting from illegal hacking or mislabelling or misfiling.

12.3 It shall be the Client's sole responsibility to remove any removable media (including, but not limited to, diskettes, CDs, DVDs, USBs or PC Cards) from the Goods prior to returning or submitting the Goods for repair or replacement.

### **13. Risk and Limitation of Liability**

13.1 Risk of damage to or loss of the Goods passes to the Client on delivery, and the Client must insure the Goods on or before delivery. If any of the Goods are damaged or destroyed following delivery, but prior to ownership passing to the Client, SSIT is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by SSIT is sufficient evidence of SSIT's rights to receive the insurance proceeds without the need for any person dealing with SSIT to make further enquiries. If the Client requests SSIT to deliver the Goods to an unattended location, then such Goods shall be left at the Client's sole risk.

13.2 The Client acknowledges and agrees that SSIT shall not be held responsible or liable for any form of loss or damage of any nature whatsoever suffered, whether arising directly or indirectly, by the Client or any person related to or dealing with the Client out of, in connection with or reasonably incidental to the provision of the Services by SSIT to the Client.

13.3 The Client agrees that any such suspension or termination referred to in clause 9.4(a) above will not constitute a breach of this Agreement by SSIT and that the Services are provided on an "as is" basis without guarantee of any kind. The Client further agrees that SSIT will not be held liable for any costs, expenses, losses, damages or other liabilities (howsoever arising) which you may incur as a result of a suspension of the Services in accordance with clause 9.4(b) above.

13.4 SSIT shall be under no liability whatsoever to the Client for any indirect, incidental, special and/or consequential loss and/or expense, claim and/or cost (including legal fees and commissions, loss of profit, business, contracts, opportunity, goodwill, reputation and/or anticipated saving) and/or for any loss or corruption of data suffered by the Client arising out of a breach by SSIT of this Agreement and/or caused by any failure by the Client to comply with their obligations under this Agreement (alternatively SSIT's liability shall be limited to damages which under no circumstances shall exceed the Price).

13.5 SSIT 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.

13.6 The Client acknowledges that it is the policy of SSIT to report all findings of illegal material (including, but not limited to, images and software) to the relevant authorities.

13.7 The Client acknowledges and accepts that non-licenced software cannot be transferred or uploaded by SSIT under any circumstance.

### **14. Reservation of Title**

14.1 SSIT and the Client agree that the Client's obligations to SSIT for the provision of Services shall not cease (and ownership of any Goods shall not pass) until:

- a. the Client has paid SSIT all amounts owing to SSIT for the Services; and
- b. the Client has met all other obligations due by the Client to SSIT in respect of all contracts between SSIT and the Client.

14.2 It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 14.1:

- a. the Client is only a bailee of the Goods and must return the Goods to SSIT on request.

- b. the Client holds the benefit of the Client's insurance of the Goods on trust for SSIT and must pay to SSIT the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- c. the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for SSIT and must pay or deliver the proceeds to SSIT on demand.
- d. the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of SSIT and must sell, dispose of or return the resulting product to SSIT as it so directs.
- e. the Client irrevocably authorises SSIT to enter any premises where SSIT believes the Goods are kept and recover possession of the Goods.
- f. SSIT may recover possession of any Goods in transit whether or not delivery has occurred.
- g. the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of SSIT.
- h. SSIT may commence proceedings to recover the Price notwithstanding that ownership of the Goods has not passed to the Client.

## **15. Personal Property Securities Act 1999 ("PPSA")**

15.1 Upon assenting to this Agreement in writing the Client acknowledges and agrees that this Agreement constitutes a security agreement for the purposes of the PPSA and a security interest is taken in:

- a. all Goods previously supplied, or that will be supplied in the future, by SSIT to the Client;
- b. all the Client's present and after acquired property being a charge, including anything in respect of which the Client has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Client to SSIT for Services – that have previously been provided and that will be provided in the future by SSIT to the Client.

15.2 The Client undertakes to:

sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which SSIT may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;

- a. indemnify, and upon demand reimburse, SSIT for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any registration made thereby;
- b. not register, or permit to be registered, a financing statement or a financing change statement in relation to the Services in favour of a third party without the prior written consent of SSIT; and
- c. immediately advise SSIT 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.

15.3 SSIT and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to this Agreement.

15.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

15.5 Unless otherwise agreed to in writing by SSIT, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.

15.6 The Client shall unconditionally ratify any actions taken by SSIT under clauses 15.1 to 15.5.

## **16. Security and Charge**

16.1 In consideration of SSIT agreeing to provide Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under this Agreement (including, but not limited to, the payment of any money).

16.2 The Client indemnifies SSIT from and against all SSIT's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising SSIT's rights under this clause.

16.3 The Client irrevocably appoints SSIT and each director of SSIT as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Client's behalf.

**17. Defects, Returns and Warranties**

17.1 The Client must inspect SSIT's Services on completion (or Goods on delivery) and must within thirty (30) days notify SSIT in writing of any alleged defect, shortage in quantity, damage or failure to comply with the description or this Agreement. The Client shall afford SSIT an opportunity to inspect/review the Services within a reasonable time following such notification if the Client believes the Services are defective in any way. If the Client shall fail to comply with these provisions the Services shall be presumed to be free from any defect or damage. For defective Services, which SSIT has agreed in writing that the Client is entitled to reject, SSIT's liability is limited to either (at SSIT's discretion) rectifying or re-providing the Services.

17.2 Returns will only be accepted provided that:

the Client has complied with the provisions of clause 17.1; and

- a. SSIT has agreed in writing to accept the return of the Goods; and
- b. the Goods are returned at the Client's cost within seven (7) days of the delivery of the Goods; and
- c. SSIT 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.

17.3 Subject to clause 17.1, non-stocklist items or Goods made to the Client's specifications are not acceptable for credit or return.

17.4 For Goods not manufactured by SSIT, the warranty shall be the current warranty provided by the manufacturer of the Goods. SSIT 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.

17.5 In the case of second hand or reconditioned Goods, the Client acknowledges that they have had full opportunity to inspect the same and accepts the same with all faults and that no warranty is given by SSIT as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. SSIT shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

**18. Intellectual Property**

18.1 If during the course of providing the Services, SSIT develops, discovers, or puts into operation a new concept, product or process, or creates any Goods, which is capable of being patented, then such concept, product or process, or Goods shall be and remain the property of SSIT and the Client shall not use or supply the same in any way whatsoever without first obtaining the written consent of SSIT.

18.2 The Client warrants that all designs, specifications, information and instructions to SSIT will not cause SSIT to infringe any patent, registered design or trademark in the execution of the Client's order. Furthermore, the Client agrees to indemnify, defend, and hold SSIT harmless from all loss incurred or suffered by SSIT arising from any claims (including third party claims) or demands against them where such loss was caused by any infringement or alleged infringement of any person's Intellectual Property rights by the Client during its use of the Services.

**19. Default and Consequences of Default**

19.1 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 SSIT's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

19.2 If the Client owes SSIT any money, the Client shall indemnify SSIT from and against all costs and disbursements incurred by SSIT in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, SSIT's collection agency costs, and bank dishonour fees).

19.3 Further to any other rights or remedies SSIT may have under this Agreement, if a Client has made payment to SSIT, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by SSIT under this clause 19 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Agreement.

19.4 Without prejudice to SSIT's other remedies at law, SSIT shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to SSIT shall, whether or not due for payment, become immediately payable if:

- a. any money payable to SSIT becomes overdue, or in SSIT's opinion the Client will be unable to make a payment when it falls due;
- b. the Client has exceeded any applicable credit limit provided by SSIT;



- c. 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
- d. a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

## **20. Confidentiality**

20.1 Subject to clause 20.2, each party agrees to treat as confidential the other party's Confidential Information, and agree not to divulge it to any third party, without the other party's written consent.

20.2 Both parties agree to:

- a. use the Confidential Information of the other party only to the extent required for the purpose it was provided;
- b. not copy or reproduce any of the Confidential Information of the other party in any way;
- c. only disclose the other party's Confidential Information to:
- d. employees and third-party providers who need access to the information and who have agreed to keep it confidential;
- e. its legal advisers and insurance providers if those persons undertake to keep such information confidential; and
- f. not disclose the other party's Confidential Information to any person not referred to in this clause except with the other party's prior written consent or if required by law, any stock exchange or any regulatory body.

20.3 Either party must promptly return or destroy all Confidential Information of the other party in its possession or control at the other party's request unless required by law to retain it.

20.4 Confidential Information excludes information:

- a. generally available in the public domain (without unauthorised disclosure under this Agreement);
- b. received from a third party entitled to disclose it;
- c. that is independently developed.

20.5 The obligations of this clause 20 shall survive termination or cancellation of this Agreement.

## **21. Cancellation and Termination**

21.1 Without prejudice to any other remedies SSIT may have, if at any time the Client is in breach of any obligation (including those relating to payment, whether or not the payment is due to SSIT) SSIT may restrict access to the cloud and network Services, suspend or terminate the provision of Services to the Client, and any of its other obligations under this Agreement. SSIT will not be liable to the Client for any loss or damage the Client suffers because SSIT has exercised its rights under this clause.

21.2 Either party may, without liability, cancel this Agreement, or cancel provision of the Services:

- (a) if there is no term specified, at any time by giving thirty (30) days' notice to the other party;
- (b) if a term is specified, at any time after the end of the term by giving thirty (30) days' notice to the other party;

21.3 SSIT may, in addition to their right to cancel under clause 21.1:

- a. do so at any time:
  - (i) prior to the commencement of the Services, by giving notice to the Client, in the event SSIT determine it is not technically, commercially or operationally feasible to provide the Services to the Client;
  - (ii) in the event the Client materially breaches this Agreement, and such breach is not capable of remedy.

21.4 In the event that the Client:

- a. cancels this Agreement, or the provision of Services, prior to the expiry of any specified term, then the Client shall be liable to pay for the provision of the Services until the expiration of the term;
- b. fails to give notice of intention to cancel at least thirty (30) days prior to the expiration date of the term, the term shall automatically renew on a monthly basis, unless cancelled by way of the Client providing SSIT with thirty (30) days' notice.

21.5 Should the Client, for any reason, cause the Services to be delayed for more than three (3) months after the acceptance date, this Agreement will be terminated by SSIT (at their sole discretion) and all Services completed, but not billed or paid, will be payable in full within seven (7) days from the date of the submitted invoice.

**22. Privacy Act 1993**

22.1 The Client authorises SSIT or SSIT's agent to:

- a. access, collect, retain and use any information about the Client;
  - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
  - (ii) for the purpose of marketing products and services to the Client.
- b. disclose information about the Client, whether collected by SSIT from the Client directly or obtained by SSIT 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.

22.2 Where the Client is an individual the authorities under clause 22.1 are authorities or consents for the purposes of the Privacy Act 1993.

22.3 The Client shall have the right to request SSIT for a copy of the information about the Client retained by SSIT and the right to request SSIT to correct any incorrect information about the Client held by SSIT.

**23. Dispute Resolution**

23.1 All disputes and differences between the Client and SSIT touching and concerning this Agreement shall be referred to arbitration under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996.

**24. Service of Notices**

24.1 Any written notice given under this Agreement shall be deemed to have been given and received: by handing the notice to the other party, in person;

- a. by leaving it at the address of the other party as stated in this Agreement;
- b. by sending it by registered post to the address of the other party as stated in this Agreement;
- c. if sent by facsimile transmission to the fax number of the other party as stated in this Agreement (if any), on receipt of confirmation of the transmission;
- d. if sent by email to the other party's last known email address.

24.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

**25. Trusts**

25.1 If the Client at any time upon or subsequent to entering in to the Agreement is acting in the capacity of trustee of any trust ("Trust") then whether or not SSIT may have notice of the Trust, the Client covenants with SSIT as follows:

- a. the Agreement extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
- b. the Client has full and complete power and authority under the Trust to enter into the Agreement and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
- c. the Client will not without consent in writing of SSIT (SSIT will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;
  - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
  - (ii) any alteration to or variation of the terms of the Trust;
  - (iii) any advancement or distribution of capital of the Trust; or
  - (iv) any resettlement of the trust property.

**26. General**

26.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. 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.

26.2 This Agreement shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Tauranga District Court.

26.3 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 provision of Services by SSIT to the Client.

26.4 SSIT may licence and/or assign all or any part of its rights and/or obligations under this Agreement without the Client's consent.

26.5 The Client cannot licence or assign without the written approval of SSIT.

26.6 SSIT may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Agreement by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of SSIT's sub-contractors without the authority of SSIT.

26.7 The Client agrees that SSIT may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for SSIT to provide Goods to the Client.

26.8 Neither party shall be liable for any default due to fires, explosions, severe weather, industrial disputes, insurrection, requirements or regulations, or any civil or military authority, acts of war (whether declared or not), civil unrest, acts of God, earthquake, flood, riot, embargo, government act, strike, lock-out, storm, terrorism, failure or outage of any telecommunications links or other connections which are beyond the reasonable control of either party.

26.9 Both parties warrant that they have the power to enter into this Agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Agreement creates binding and valid legal obligations on them.