

TERMS OF TRADE

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PART A: OVERVIEW OF THESE TERMS

These Terms of Trade apply to all Services that we supply to you.

At Business Partners Inc Limited ensuring our Terms are transparent and easy to understand is important to us. If you have any questions or are unsure about anything, please contact us.

To make these Terms easy to use, we:

- (a) have set out a 'Dictionary' in Part H, which explains the specific meaning, for the purposes of these Terms, of the capitalised words used in these Terms; and
- (b) have included **summaries / outlines** for each Part in blue boxes – these are intended for guidance only and do not replace any of the terms in these Terms.

1. Introduction

- 1.1 These Terms set out all of the terms and conditions that apply to Services that we supply to you.
- 1.2 Any other terms and conditions will not apply unless expressly approved in writing by us for a particular Order.
- 1.3 We may update these Terms on notice to you in writing. Our updated Terms will apply to all Services you order after we have notified you that we have updated our Terms.

PART B: SERVICES

Part B sets out details about placing Orders. It also sets out the process that applies if there are any issues with an Order or if an Order is cancelled.

2. Order process

- 2.1 You may order Services from us in accordance with our order processes that we advise to you at any time.
- 2.2 All Orders are subject to acceptance by us. We may accept an Order (in whole or in part) by issuing an invoice for the applicable Services, providing the Services or otherwise confirming the order in writing.
- 2.3 We are under no obligation to enquire as to the authority of any person placing an Order on your behalf.
- 2.4 You may request Variations to Orders. However, acceptance is at our discretion and is subject to our approval in writing, in accordance with clause 5.

3. Supply of Services

- 3.1 We will use reasonable efforts to provide Services on the date specified in the relevant Order. However, unless expressly agreed otherwise, the date is indicative only.
- 3.2 We will provide the Services at the delivery location set out in the relevant Order or any other location agreed with you in writing.
- 3.3 Subject to clause 13, if the delivery location is at your premises, you must provide our Representatives with suitable access to your premises during normal business hours, together with any assistance reasonably required by our Representatives to perform the Services.

4. Cancellation

- 4.1 Either party may cancel an Order by written notice if the other party:
 - (a) commits a material breach of these Terms which is not remedied within 20 Business Days of written notice of the breach from the other party; or
 - (b) suffers an Insolvency Event.
- 4.2 If we are unable to provide Services to you, due to reasons beyond our reasonable control, we may cancel the Order (in whole or in respect of any instalment) by giving written notice to you. We will repay you any amount you have paid to us in advance for the relevant Services. We will not be liable for any loss or damage arising from such cancellation.

5. Variations

- 5.1 We may require variations to an Order if we identify factors that affect delivery of the Services to you, before or during our provision of the Services. Any such variations will be submitted to you for approval (**Variation Notice**). You must respond to a Variation Notice as soon as possible (and within 10 Business

Days). We may suspend or delay provision of the Services pending your approval.

- 5.2 If you do not respond to a Variation Notice within 10 Business Days, we may assume that you have accepted the applicable variations.
- 5.3 If you notify us, within 10 Business Days of a Variation Notice, that you do not accept the variations, we will cancel the Order (or, if applicable, the remaining Services to be provided under the Order) on notice to you. We will repay you any amount you have paid to us in advance for Services that we do not provide as a result of such cancellation (less any unrecoverable costs that we have incurred).

PART C: PRICE

Part C sets out terms relating to the Price for Services.

6. Price

- 6.1 The Price for Services will be:
 - (a) calculated in accordance with our current price list as at the date you submit the relevant Order;
 - (b) the Price that we have quoted for Services (subject to clause 6.5).
- 6.2 We may update our price list at any time on notice to you in advance. Any such updates will only apply to Orders placed after the effective date of the update.
- 6.3 Unless otherwise stated, the Price does not include GST.
- 6.4 We may charge you for disbursements and any expenses reasonably and properly incurred in connection with the provision of the Services, in addition to the Price.
- 6.5 Where we provide a quotation, proposal or estimate:
 - (a) unless otherwise specified, the quotation, proposal or estimate is valid for 30 days from the date of issue and may be subject to such further conditions as are expressly set out in the quote, estimate or pricing;
 - (b) we may withdraw the quotation, proposal or estimate at any time before you accept it or we accept an Order by notice in writing to you; and
 - (c) the quotation, proposal or estimate will be exclusive of any applicable additional amounts referred to in clause 6.4.

PART D: PAYMENT TERMS

Under these Terms, we may supply Services to you on credit. It is very important to us that you pay us in full by the due date for payment. The following clauses provide additional protections for us to reflect that arrangement, including terms that will apply if there are any delays or disputes relating to payments.

7. Payment

- 7.1 You must pay us all Amounts Owing to our bank account (notified to you and updated at any time) or any other payment method that we agree with you.
- 7.2 Payment shall be:
 - (a) before delivery of the Services; or
 - (b) by way of instalments/progress payments in accordance with the Order; or
 - (c) as indicated on our invoice; or
 - (d) no later than 7 days from the date of the invoice (unless otherwise stated on the invoice), and
 - (e) in full without deduction, withholding, set-off or counterclaim.

7.3 If you have any dispute relating to an invoice issued by us, you:

- (a) must notify us of that dispute in writing within 7 days from the date of invoice (after that period, unless there is a manifest error, you will be deemed to have accepted the invoice); and
- (b) will only withhold payment of the amount in dispute and will, upon resolution of any dispute, immediately pay the balance (if any) due to us.

7.4 We and you each agree to promptly deal with any disputed invoices and, where possible, to resolve disputes before the due date for payment.

8. Credit terms and repayment obligations

The provision of Services to you on credit is subject to our approval. We may use the services of credit reporters and debt collection agencies (in accordance with clause 14.2).

8.2 You must notify us immediately:

- (a) if you suffer an Insolvency Event. Any Amount Owing will, whether or not due for payment, immediately become due and payable if an Insolvency Event occurs; or
- (b) if you are a company and there is a material change in your effective management or ownership.

9. Deposit and guarantee

We may require that you pay us in advance, or pay a deposit, or provide a guarantee or other security, before we supply Services, as security for any Amount Owing.

If we cancel an Order (for reasons other than your breach of these Terms), we will refund any deposit that you have paid to us in full. Otherwise, any deposit that you pay to us is non-refundable, unless we expressly agree otherwise in writing.

10. Late payments

If payment in full of any Amount Owing (which is not subject to a genuine dispute) is not made to us on the due date, we may:

- (a) suspend, or cancel (in accordance with clause 4.1(a)), the provision of any or all Services to you;
- (b) cancel any rebates or discounts (whether or not previously credited); and
- (c) charge you interest at a rate of 2.5% per month on the balance of the outstanding amount from the due date of payment until the date the

outstanding amount is paid, accruing daily and charged monthly.

11. **Costs of recovering Amounts Owed**

11.1 You must reimburse us for any reasonable costs and expenses we incur to recover any Amount Owed, including any debt collection fees or commission and full legal expenses.

12. **Security**

12.1 We reserve the right to require a guarantee, or any other additional security (at your cost), as security for payment, before we provide Services to you.

PART E: COMPLIANCE AND INFORMATION

Part E sets out the provisions relating to health and safety, privacy, confidentiality and intellectual property rights. Unless we agree otherwise, we own all intellectual property rights in the Services.

13. **Health and safety**

13.1 Each party will comply with the Health and Safety at Work Act 2015 (**HSW Act**), including all applicable regulations under the HSW Act, as well as all applicable standards and codes of practice relating to health and safety. In addition, each party will comply with the other party's pre-notified and reasonable health and safety policies when on the party's premises.

13.2 You must notify us of any known hazards arising from your premises to which any of our Representatives may be exposed while on the premises and ensure that your workplace is without risks to the health and safety of any person.

13.3 Each party must consult, co-operate with and co-ordinate activities with all other persons who have a health and safety duty in relation to the same matter in providing the Services (including in connection with the delivery of the Services).

14. **Privacy**

14.1 We may collect, use and share Personal Information:

- (a) for the purposes of the performance of our obligations or exercise of our rights under these Terms; and
- (b) in accordance with the Privacy Act 2020.

This may include sharing Personal Information with our Related Companies.

14.2 We may use the services of credit reporters and debt collection agencies. We may provide your Personal Information to those agencies in order to use their services. Information disclosed to credit reporters (including default information) will be held by them and used to provide credit reporting services.

14.3 If you provide us with any information about a third party (including a representative), or authorise us to collect that information, you confirm that you are authorised by the individual concerned to provide their Personal Information to us or authorise the collection of information about them in accordance with this clause 14. You also confirm that you have informed the individual of their rights to access and request correction of Personal Information.

14.4 You (if you are an individual) and your Representatives have the right to access, and request correction of, any of your Personal Information held by us.

15. **Confidentiality**

15.1 Each party must keep confidential all Confidential Information.

15.2 Nothing in clause 15.1 prevents a party from disclosing Confidential Information if disclosure is:

- (a) required by law, or a Regulator (but only to the extent required or, if applicable, requested by a Regulator);
- (b) is reasonably required to enable a party to perform its obligations or exercise its rights under these Terms; or
- (c) to a Related Company or Representatives on a 'need to know' basis, provided that person is under a duty to keep the Confidential Information confidential in accordance with these Terms.

15.3 We may refer to you as a customer (including by using your logo) and publish any testimonials or references that you provide to us, on our website and associated marketing materials. We will ensure that any such references or testimonials accurately represent your experience with our Services. Please contact us if you do not approve us referring to you in accordance with this clause or have any comments on published content.

16. **Insights and Intellectual property**

16.1 We may also use any information that we collect in connection with the Services to improve our Services, for statistical and research purposes, and for general information purposes including to provide industry and market insights (together, **Insights**), provided that:

- (a) we must ensure that our obligations of confidentiality and privacy are paramount – for example, we will ensure that any information that we disclose or publish in accordance with this clause 16.1 is in a fully aggregated and de-identified form (so that it does not identify you or any individuals); and
- (b) we will not use information that we collect in connection with the provision of the Services to you, in accordance with this clause 16.1, if you have informed us that you do not authorise us to do so.

16.2 To the extent required by law, you grant us a non-exclusive, perpetual, irrevocable, royalty-free licence to use and sub-licence information we collect in connection with the provision of Services to you, in accordance with clause 16.1. However, for clarity, we own the intellectual property rights in all Insights.

16.3 We (or our licensors) own all rights, title and interest in the intellectual property rights, in the Services at all times.

16.4 Any new intellectual property which is created by us or on our behalf, including as a result of, or in connection with, the provision of our Services, will be owned by us, unless otherwise agreed in writing.

16.5 You assign all intellectual property rights to us with effect from creation, to the extent required to give effect to clause 16.3 and 16.4, and agree to do all things reasonably required by us to give effect to such assignment.

16.6 You warrant that the use by us of any designs, instructions or specifications supplied to us by you will not infringe the intellectual property rights of any other person and indemnify us against any losses, damages, liabilities or costs (including full legal costs) that we may suffer or incur in the event of any such infringement.

PART F: DISPUTE RESOLUTION AND LIABILITY

If a dispute arises under these Terms, we must follow the process in this part F to resolve the matter. If a claim arises under these Terms, any amount payable by you or us will be limited by the liability framework set out in this Part F.

17. **Dispute Resolution**

17.1 If a dispute arises out of or in connection with these Terms, either party may give a notice to the other setting out the details of the dispute (**Dispute Notice**).

17.2 Following receipt of a Dispute Notice:

- (a) a Representative of each of us (with authority to settle the dispute) will meet, within 10 Business Days, to try to resolve the dispute;
- (b) if the dispute is not resolved within 10 Business Days of our Representatives meeting (or if the meeting does not take place, for any reason, within 10 Business Days of the date of a Dispute Notice), the dispute will be referred to the senior manager of each party (if applicable), who will try to resolve the dispute within a further 10 Business Days; and
- (c) if the dispute is not resolved by our respective Representatives in accordance with clause 17.2(b), then either party may commence court proceedings.

17.3 This clause 17 does not restrict either party from applying to a court for interim measures or any other form of urgent relief at any time. However, neither party may commence any other form of court proceeding without first following the procedure set out in this clause 17.

17.4 Each party must continue to perform its obligations in these Terms, despite the existence of a dispute, subject to the termination rights set out in these Terms.

18. **Consumer Guarantees Act**

18.1 If you are acquiring, or hold yourself out as acquiring, the Services in trade, to the extent permitted by law, you agree that the parties are contracting out of the CGA (to the extent that the CGA would otherwise apply) and that the CGA does not apply to any matters covered by these Terms.

19. **Warranties**

19.1 We warrant that all Services are free from material defects in workmanship. However, this warranty will not cover any defect or damage to the extent that it is caused by any fault or defect in our Services resulting from any of your (or your Representatives) acts or omissions (outside of the ordinary use of the Services).

19.2 You acknowledge that, except for the warranty set out in clause 19.1 and any written materials that we provide to you:

- (a) we do not provide any other express warranties relating to the Services; and
- (b) we expressly exclude any other Service warranties, including any warranties relating to the suitability for resale, quality or fitness for any particular purpose, of our Services. However, this clause 19.2 is subject to any rights that you may have under the CGA (in accordance with clause 18.1).

20. **Third party suppliers**

20.1 If you request and authorise us to arrange the provision of Services directly to you by a third party supplier (whether or not such arrangement involves us contracting as your agent), to the extent applicable, these Terms will apply to our Services in arranging such supply, provided that to the extent permitted by law we exclude all liability in connection with the supply of Services to you directly by a third party supplier. You agree to pay any commission or other payments due to us in accordance with these Terms.

21. **Limitation of liability**

21.1 To the extent permitted by law, subject to clause 21.3, our total liability under or in connection with these Terms and the Services is limited to:

- (a) supplying the Services again; or
- (b) the payment of the cost of having the Services supplied again.

21.2 Subject to clause 21.3, if we have any liability under or in connection with these Terms, to the maximum extent permitted by law:

- (a) our total aggregate liability to you for any loss, damage or liability arising out of or in connection with these Terms will be limited to the Price paid by you to us for the applicable Services; and
- (b) we will not be liable for any:
 - (i) indirect, special or consequential loss or damage whatsoever; or
 - (ii) loss of profits, revenue, data, goodwill, customers or opportunity or loss of or damage to reputation.

21.3 Nothing in these Terms (including clauses 21.1 and 21.2) will limit or exclude our liability for:

- (a) any fraudulent act or omission;
- (b) a breach of clause 15 (Confidentiality);
- (c) our wilful breach of these Terms;
- (d) our gross negligence; and/or
- (e) any matter to the extent that liability cannot be excluded or limited by law.

21.4 The limitations and exclusions on liability in this clause 21 will apply irrespective of whether the legal basis for the applicable claim is contract, equity or tort (including negligence). However, this clause 21 does not limit or exclude any rights that you may have under statute.

21.5 In no circumstances will we have any liability whatsoever under or in connection with these Terms:

- (a) for the acts or omissions of your Representatives or any third party;
- (b) for any acts or omissions of performance in accordance with your instructions (or instructions from your Representatives); or
- (c) to any third party.

PART G: GENERAL

Part G describes miscellaneous provisions necessary for the proper operation of these Terms.

22. **General**

22.1 **Governing Law:** These Terms are governed by and to be construed in accordance with the laws of New Zealand and each party submits to the exclusive jurisdiction of the courts of the Waikato Region in New Zealand.

22.2 **Previous Agreements:** These Terms supersede and replace any previous written agreements between the parties relating to the Services.

22.3 **Sub-contracting:** We may subcontract the performance of our obligations (including to a Related Company), on the basis we remain solely liable to you for the performance of our obligations.

- 22.4 **Assignment:** You must not assign, novate or transfer your rights or obligations under these Terms without our prior written consent (which may be withheld in our sole discretion). We may assign these Terms to any other person on notice to you (provided that we will request your prior approval (not to be unreasonably withheld or delayed) if the assignment could have any material adverse effect on you). Without limiting the foregoing, we may assign to any other person all or part of the Amount Owed by you to us.
- 22.5 **Amendments:** Any amendment to these Terms must be in writing signed by each party, except where stated otherwise in these Terms or where we are required to make changes to ensure compliance with applicable laws (in which case we notify you of the changes in writing).
- 22.6 **Force majeure:** We will not be liable to you for any failure or delay in performing our obligations under these Terms where such failure or delay is caused by events or circumstances beyond our reasonable control, including any strike, lockout, labour dispute, delay in transit, embargo, epidemic, pandemic, accident, emergency, order of government or other authority or act of God.
- 22.7 **Waiver:** A single or partial exercise or waiver of a right relating to these Terms does not prevent any other exercise of that right or the exercise of any other right.
- 22.8 **Survival:** Any provision of these Terms, which is by its nature a continuing obligation, will survive termination.
- 22.9 **Rights of Third Parties:** These Terms are not intended to confer a benefit on any person other than the parties to these Terms.
- 22.10 **Relationship:** We will provide Services to you as an independent service provider. Nothing in these Terms creates a relationship of employment, trust, agency, joint venture, partnership or any other fiduciary relationship between the parties.
- 22.11 **Non-exclusive:** These Terms are not exclusive and do not impose any restriction on us providing Services to, or you purchasing any product or services from, any other person.
- 22.12 **Counterparts:** These Terms may be executed in any number of counterparts (including by electronic signature or by email exchange of .pdf copies) which together will constitute the one instrument.

PART H: DICTIONARY

Part H sets out a Dictionary, to define the capitalised terms used in these Terms.

23. Definitions

Amount Owed means any amount owed by you to us, from time to time, including the Price, any applicable amounts referred to in clause 6, any interest payable by you, your liability under these Terms and any enforcement costs incurred by us in seeking payment of any Amounts Owed by you.

Business Day means Monday to Friday, excluding public holidays in New Zealand.

Confidential Information means all information that could be reasonably regarded in the circumstances as confidential, including information which relates to the business, interests or affairs of a party, the terms of use, the Services (as applicable), and intellectual property rights, but excludes information which is:

- (a) in the public domain, other than as a result of a breach of these Terms;
- (b) in the possession of a party prior to the commencement of these Terms without any obligation of confidentiality; and
- (c) is independently developed or acquired by a party prior to the commencement of these Terms without relying on information which would itself be Confidential Information.

Consumer has the meaning given to that term in the Consumer Guarantees Act 1993.

Insolvency Event means, in relation to you, any of the following steps has occurred (or we have reasonable grounds to believe that any of these steps is likely to occur):

- (a) the primary, or all, of your business activities is suspended or ceases;
- (b) the presentation of an application for your liquidation;
- (c) the making of any compromise, proposal or deed of arrangement with all or some of your creditors;
- (d) the appointment of a liquidator, receiver, statutory manager, or similar official;
- (e) your suspension or threatened suspension of the payment of your debts as they fall due;
- (f) the enforcement of any security against the whole or a substantial part of your assets;
- (g) if you are an individual, anything having a similar effect to any of the events specified above happens in relation to you; or
- (h) any other insolvency event or proceedings analogous to any of the foregoing occurs in any relevant jurisdiction,

in each case, unless it takes place as part of a solvent reconstruction, amalgamation, merger or consolidation.

Order means an order for Services that you submit to us and we approve, in accordance with clause 2.

Personal Information has the meaning given to that term in the Privacy Act 2020.

Price means the Price payable, in accordance with clause 6.1.

Regulator means any authority, commission, government department, court, tribunal, or similar having regulatory or supervisory authority over the parties or any of the Services.

Related Company has the meaning given to it in the Companies Act 1993, read as if a reference to company was a reference to any body corporate of any jurisdiction.

Representatives means directors, officers, employees, agents and contractors of the relevant party.

Services means any services supplied by us to you at any time, including the Services specified in an Order.

Specific Terms means the terms (if any) that are included in Part I to these Terms.

Terms means these Terms of Trade (including any Specific Terms outlined in Part I), as may be amended from time to time, each Order and any additional terms expressly agreed in accordance with clause 1.2 (if applicable).

We or us means the supplier of Services, Business Partners Inc Limited.

You or your means the customer purchasing Services from us.

24. Interpretation

In these Terms, unless the context otherwise requires:

- (a) headings are for convenience only and do not affect interpretation;

- (b) a reference to legislation includes all regulations, orders, instruments, codes, guidelines or determinations issued under that legislation or and any modification, consolidation, amendment, re-enactment, replacement or codification of it;
- (c) a reference to "in writing" includes by email and a reference to "agree" or "agreement" or "notice" or "approval" means an agreement, notice or approval (as applicable) in writing;
- (d) the words "include" or "including", or similar expressions, are to be construed without limitation;
- (e) a reference to a party to includes that party's successors and permitted assigns and substitutes; and
- (f) a word importing the singular includes the plural and vice versa.

PART I: SPECIFIC TERMS

Part I details any specific terms that apply to your order of Services.

25. Your acknowledgements

25.1 These terms and conditions are meant to be read in conjunction with the terms and conditions posted on our website. If there are any inconsistencies between the two documents, then the terms and conditions contained in this document shall prevail.

25.2 New information, improved practices and changes in legislation may require the reinterpretation of documentation, in whole or in part, after their original issue. We reserve the right to alter their conclusions and recommendations in the light of further information that may become available.

25.3 We shall be entitled to rely on the accuracy of any reports, specifications and other information provided by you. You acknowledge and agree that in the event that any of this information provided by you is inaccurate, we accept no responsibility for any loss, damages, or costs however resulting from these inaccurate reports, specifications or other information.

25.4 You acknowledge that documentation are written in the context of an agreed scope of Services and should not be used in a different context and any suggestions or recommendations are not meant to replace the professional advice of your lawyer, accountant or any other professional business advisors you choose to engage with.

26. Scope of the Services

26.1 The scope of the Services shall be defined by the task or matters given in our proposal submitted to you in response to your brief. Such proposal may be amended following consultation with you, in which case the scope of the Services shall then be our proposal as modified by any amendments confirmed in writing to you.

26.2 We shall exercise reasonable skill, care and diligence in the performance of the Services.

26.3 If we are required to exercise our professional judgment between you and a third party with whom you have a contract, then we shall do so independently and as required by the terms of that contract.

26.4 We shall use all reasonable efforts to inform ourselves of your requirements for the Services and for that purpose we shall consult you throughout the performance of the Services.

26.5 If we consider that the information, documents and other particulars made available to us by you are not sufficient to enable us to provide the Services in accordance with this contract, we may advise you who shall then provide such further assistance, information, or other particulars as necessary in the circumstances.

26.6 If we become aware of any matter which will change or which has changed the scope or timing of the Services then we will give notice to you and the notice will contain, as far as practicable in the circumstances, particulars of the change.

26.7 We shall perform the Services in a timely manner to the extent that it is within our control to do so.

27. Your responsibilities

27.1 You shall as soon as practicable:

- (a) make available to us all information, documents and other particulars relating to your requirements for the Services;
- (b) carry out any additional special obligations set out in the proposal; and
- (c) co-operate with us and shall not interfere with or obstruct the proper performance of the Services.

27.2 You agree that the Services do not include any services which are properly carried out by other professions such as legal or accounting and if other such professional services are required you shall obtain these services at your own cost.

27.3 If you become aware of any matter which may change the scope or timing of the Services, then you will give written notice of same to us.

28. Use of reports and advice

28.1 Any advice that we give to you: your employees or agents is for your exclusive use and must be used only for the purpose described in the scope of Services.

28.2 Unless we give you prior written consent, the advice:

- (a) must not be used or disclosed for any other purpose, referred to in any document or made available to any other person, except your lawyers or other professional advisor assisting in the Services; and
- (b) may not be relied upon by any other party other than you.

28.3 We are not responsible to any other party other than you, who are provided with or obtains a copy of our advice.

28.4 Our advice may, on occasion, be given to you in draft form or orally only on the basis that you may not rely on advice in that form. Accordingly, we shall not be responsible if you or any other party rely on the advice or chooses to act, or refrains from acting, on the basis of any draft advice or oral comments or advice.

28.5 You acknowledge that the signed copy of our final advice is the definitive version. Sometimes circumstances may change after we have provided our final advice to you. If this happens, we will not update any final advice we have provided to you under these terms and conditions. If you would like us to update our final advice, you must contact us, and both parties can discuss a suitable term of engagement.