

1. DEFINITIONS

- 1.1. "Binary" shall mean Binary Solutions Limited or any agents or employees of Binary Solutions Limited.
- 1.2. "Customer" shall mean the Customer, any person acting on behalf of and with the authority of the Customer or any person purchasing goods and services from Binary.
- 1.3. "Goods" and "Goods and Services" shall mean:
 - A. All parts and services agreed to be supplied by Binary to the Customer under any contract, arrangement or understanding between Binary and the Customer.
 - B. All future supplied Goods and Services and all additional or different property as may in the future from time to time be supplied.
 - C. The Goods and Services as contained and described in invoices, statements and other documents issued by Binary.
 - D. "Goods", "Inventory", "Other Goods" and "Personal Property" as
 - E. those terms are defined in the Personal Property Securities Act 1999; and
 - F. All present and after acquired personal property and collateral including proceeds of whatever nature or kind that may arise.
- 1.4 "Order Completion Date" shall mean that date specified on the Order Confirmation.

2. ACCEPTANCE

- 2.1 Binary accepts the Customer's order on these conditions which conditions (together with the Customer's acceptance) constitutes the entire agreement between Binary and the Customer (except to the extent that such terms and conditions are modified in writing and signed by both parties) and it is expressly agreed that there are no other understandings, representations or warranties of any kind (express or implied) forming part of this contract.

3. CANCELLATION OF ORDER

- 3.1. Any variation, waiver or cancellation of the Customer's order shall be of no effect unless accepted in writing by Binary within 7 days of the Order Completion Date ("Cancellation Date").
- 3.2. Any variation, waiver, or cancellation of the Customer's order after the Cancellation Date shall be of no effect unless accepted in writing by Binary.
- 3.3. Where Binary accepts cancellation of the Customer's order referred to in clause 3.2 above, Binary may levy a handling charge of up to 25% of the price in the case of non-processed orders and 50% of the price in respect of processed orders.

4. PRICE AND PRICE VARIATION

- 4.1. Prices quoted are excluding GST unless otherwise stated. Unless otherwise agreed in writing, the price of the Goods and Services will be the current price on the day of delivery of the Goods and Services. Prices do not include any delivery surcharges.
- 4.2. BINARY shall be entitled to adjust any price quoted from time to time and the Customer agrees to pay any such adjusted price to take account of variations in the cost to Binary of carrying out the whole or any part of the contract arising from any of the following:
 - A. Delays in delivery as a result of instructions or lack of instructions from the Customer, the Customer's failure, or inability to fulfil the obligations under the contract or any action or inaction by the Customer or other circumstances beyond PP P's control.
 - B. Variations in the cost of rates of all statutory, government or local government or governmental authority charges and obligations; or
 - C. Any correction of errors or omissions on the part of BINARY or any of its representatives.

5. GST

- 5.1. All Goods and Services sold are subject to Goods and Services Tax.

6. PAYMENT

- 6.1. Unless otherwise agreed, the purchase price shall be paid to BINARY at its address by the 20th of the month following the month in which the invoice was dated. Payment will not be accepted by any means other than cash, cheque, or direct credit.
- 6.2. If any account is in dispute, the undisputed portion of the account shall be payable in accordance with the normal means of payment as provided in clause 6.1. Payment of the disputed portion may be withheld provided the matter is brought to Binary's attention immediately it is discovered and a letter of explanation setting out the particulars of the dispute is sent to Binary within seven days of the dispute arising.
- 6.3. Binary reserves the right to suspend delivery of further Goods and Services if the terms of payment are not strictly adhered to by the Customer.
- 6.4. Without prejudice to its rights to sue for payment or exercise any other remedy where any payment is not made on the due date Binary may charge the Customer interest on the amount outstanding at the rate equal to 4% per annum over the base lending rate from time to time of Binary's bankers (from the due date of payment until payment is received by Binary) but the charging of interest does not extend the time for payment nor imply any forbearance to sue or otherwise recover overdue monies.
- 6.5. Any expenses, costs or disbursements incurred by Binary in recovering any outstanding monies including debt collection agency fees or solicitors' costs shall be paid by the Customer.

7. DELIVERY

- 7.1. Binary will not be responsible for any part delivery or delay in delivery of the Goods and Services as a result of events occurring beyond Binary's control. Binary shall not be in any way responsible for any consequences (direct or indirect) arising from such delay or non-delivery.
- 7.2. Any quotations of delivery or performance times for Goods and Services by Binary are made in good faith but as estimates and not commitments. Binary shall not be bound by such estimates and shall not be liable to the Customer for any loss or damage arising in any way from any delay in delivery or performance.

8. PRIVACY ACT 1993

- 8.1. The Customer authorises Binary to collect, retain, and use personal information about the Customer (including the information collected in this document) for the following purposes only:
- 8.1.1. Assessing the Customers creditworthiness.
 - 8.1.2. Disclosing to a third-party detail of this application and any subsequent dealings it may have with Binary for the purpose of recovering amounts payable by the Customer and providing credit references.
 - 8.1.3. Marketing Goods and Services provided by Binary to the Customer.

9. RISK

- 9.1. The Goods remain at Binary's risk until delivery to the Customer.
- 9.2. Delivery of Goods shall be deemed complete when Binary gives possession of the Goods directly to the Customer or possession of the Goods is given to a carrier, courier or other bailee for purposes of transmission to the Customer.

10. OWNERSHIP AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

10.1. Ownership in Goods and Services supplied by Binary passes to the Customer only when the Customer has made payment in full for all Goods and Services provided by Binary. and of all other sums due to Binary by the Customer on any account whatsoever (including any default interest pursuant to clause 6.4 and enforcement and legal costs pursuant to clause 6.5. Until all sums due to Binary by the Customer have been paid in full, Binary has a security interest in all Goods.

10.2. Until payment is made the Customer agrees to:

- A. Enable the Goods and Services to be readily identifiable as the property of Binary.
- B. Maintain the Goods so supplied in good order and condition and to return the Goods immediately if called upon to do so by Binary

10.3. The Customer hereby agrees to meet all costs of and any incidentals in the recovery of the Goods and Services as well as any shortfalls between the amount owing and the value of the Goods and Services recovered.

10.4. Binary shall be entitled immediately to cancel the Customer's rights under the terms of trade by notice to the Customer if the Customer defaults in payment on the due date, time for which is strictly of the essence, or fails to comply with any of these general conditions or any terms of any particular contract of sale between Binary and the Customer, or if Binary receives any information which, in the opinion of BINARY, indicates uncertainty as to the Customer's ability to meet its financial commitments. The right of cancellation under this clause 10.4 is in addition to any other right of cancellation Binary may have whether pursuant to these general conditions or any particular contract of sale, or any statute or at common law or in equity.

10.5. If any one or more of the events occurs, or upon cancellation under clause 10.4, or upon cancellation pursuant to any other right, the Customer hereby gives Binary irrevocable authority, without prejudice to any rights or remedies of the Company, to:

- A. Recover possession of all Goods and Services in respect of which the Company has retained title either by removing the Goods and Services from the possession or control of the Customer, the duly appointed liquidator or receiver of the Customer, the Customer's purchaser, or the duly appointed liquidator or receiver of the Customer's purchaser.
- B. Enter any premises, and if need be, forcibly, for the purposes of repossession or impounding any goods and in such event the Customer shall indemnify Binary against all claims that may be made upon Binary as a consequence of Binary exercising such power of entry and removal.
- C. Employ the services of any person or enter upon and remain upon any premises occupied by or controlled by the Customer to exercise any of the preceding rights; and
- D. Give notice to any third party of Binary's rights pursuant to these give notice to any third party of Binary's rights pursuant to these general conditions and of the exercise of any of Binary's rights or remedies and the Customer shall have no claim against Binary for any loss, direct or indirect, suffered by Binary as a consequence of such notice being given by Binary.

10.6. It is agreed and acknowledged that by these terms and conditions:

- A. Purchase Money Security Interest ("PMSI") pursuant to the Personal Property Securities Act 1999 ("PPSA") is granted in priority to all other creditors by the Customer in favour of the Binary in all Goods and Services.
- B. Binary may at the Customer's cost register the PMSI interest under the PPSA by registering a financing statement and if at some later date additional or different property is supplied, to provide if necessary for registration a new collateral description by registering a financing change statement. This will not affect Binary's right to register subsequent financing statements, and to register subsequent financing change statements in respect of any other amendments.
- C. The Customer agrees to provide Binary with such information as it may need to enable registration of the PMSI under the PPSA and shall promptly execute any documents to ensure that the security interest under these terms and conditions is a first ranking perfected security interest and waive the right to receive a copy of the verification statement issued upon registration of the financing statement or of any financing change statement.
- D. That the Customer has received valuable consideration from Binary and agrees that it is sufficient; and
- E. The Customer shall not under any circumstances initiate any change to the registered financing statement.

10.7. Where the Customer is a consumer as that term is defined by the Consumer Guarantees Act 1993 it acknowledges that its right to undisturbed possession to the Goods and Services is subject to full payment of the Goods and Services and other costs and charges as stipulated in these terms and conditions and by the Customer's signature the Customer acknowledges in writing such provision and its understanding of the affects and implications of it.

11. CONSUMER GUARANTEES ACT 1993

11.1. The guarantees contained in the Consumer Guarantees Act 1993 ("CGA") are excluded where the Customer acquires the Goods and Services from Binary for the purposes of a business in terms of section 2 and section 43 of the CGA.

12. DISPUTES

12.1. No claim relating to Goods and Services will be considered unless made in writing within 14 days of delivery.

13. LIABILITY

13.1. Except to the extent of written warranties given by Binary to the Customer, all warranties, and representations in respect of Goods and Services provided are excluded, including (to the extent permitted by law) those expressed or implied by law. Where any written authority conflicts with clauses 13.2 or 13.3 the provisions of clauses 13.2 and 13.3 as applicable shall apply.

- A. Binary shall not be liable:
- B. Where the Customer has altered or modified the Goods and Services mis-applied the Goods, used the Goods (including where the Goods are no longer in the condition the Customer received them), or subjected the Goods to any unusual or non-recommended use, servicing, or handling.
- C. For loss caused by factors beyond the control of Binary.
- D. for any indirect or consequential loss of any kind.
- E. For any second-hand goods.
- F. Where the terms of any written warranty have not been complied with or any manufacturer's handbook provided to the Customer has not been complied with.
- G. For any goods which have been designation "seconds" "mediums" or "specials".

13.2. Binary's total liability for defective or damaged Goods and Services supplied by Binary is limited at Binary's option to either:

- A. Replacing or repairing the defective or damaged Goods and Services; or
- B. Refunding the price of the defective or damaged Goods and Services.

13.3. When any claim by a Customer relates to some units only of Goods and Services supplied the remainder of the Goods and Services must still be paid for by the Customer.

13.4. No claim for Goods to be returned for any reason will be considered unless advised in writing within fourteen (14) days of delivery.

13.5. Binary is service provider and is helping Customer to provide solutions according to their needs from their supplier portfolio and using their expertise to help setup the hardware \ software \ service and keep it up to the standard in a given circumstances. In the event of a service \ hardware \ software failure or performance degradation for extensive period of time and with no resolution; Binary will contact the Supplier to come to a resolution and can, with the discretion of Binary, reimburse the minimum applicable amount for the service e.g. say for cloud backup annual amount being paid is \$480+gst and it's failed on recovery for particular day then the reimburse amount will be a week charges. If the backup not happening for a fortnight, then the reimbursement will be of fortnight.

14. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

14.1. If the Customer is a company or trust the director(s) or trustee(s) signing this contract, in consideration for Binary agreeing to supply Goods and Services and grant credit to the Customer at their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to Binary the payment of any and all monies now or hereafter owed by the Customer to Binary and indemnify Binary against non-payment by the Customer. Any personal liability of a signatory hereto shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and Customer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder

15. VARIATIONS To TERMS AND CONDITIONS OF TRADE

15.1. Binary may from time to time and in its sole discretion amend, add to or delete any of the terms of these terms and conditions of trade with immediate effect by giving notice to the Customer PROVIDED THAT Binary shall not make any variation to the nature or extent of the Security Interest granted by the Customer in clause 11.6 without the written agreement of the Customer. Binary may notify the Customer by delivering to the Customer an invoice with a notice of amendment and receipt of the invoice by the Customer will be deemed to be acceptance by the Customer of the terms and conditions of trade.

16. MISCELLANEOUS

16.1. Binary shall not be liable for delay or failure to perform its obligation if the cause of the delay or failure is beyond Binary's control.

16.2. Failure by Binary to enforce any of the terms and conditions contained in this contract shall not be deemed to a waiver of any of the rights or obligations Binary has under this contract.

16.3. If any provisions of this contract shall be invalid, void, or illegal or unenforceable the validity, existence, legality, and enforcement of the remaining provisions shall not be affected prejudiced or impaired.

16.4. The terms and conditions contained in this contract will be interpreted in accordance and governed by the laws of New Zealand.