

1. Definitions

- 1.1 “Contract” means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
“ITJEDI” means ITJEDI Limited T/A ITJEDI, its successors and assigns or any person acting on behalf of and with the authority of ITJEDI Limited T/A ITJEDI.
- 1.2 “Client” means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting ITJEDI to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
(a) if there is more than one Client, is a reference to each Client jointly and severally; and
(b) if the Client is a partnership, it shall bind each partner jointly and severally; and
(c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
(d) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.3 “Services” means all Goods (which includes any content, files, information, printed or virtual material, data, hardware, software or applications (whether supplied from a third party software development company or where custom developed or programmed for the Client), brands, designs, images, graphics, pictures, trademarks, manuals, and other associated documentation and/or goods, accessories or parts) or Services (which includes any advice or recommendations, consultancy, hosting (which includes virtual server hosting, Website hosting, e-mail hosting, etc.), monitoring, data back-up or storage, strategising and analytical services, technical service, support and training, repairs, or installation of Goods, etc.) supplied by ITJEDI 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 “Live Date” means the date in which ITJEDI provides the Hosting and Support Services as per initial acceptance of ITJEDI’s quotation.
- 1.5 “SNT” means any Social Network Tool being a social media platform and/or application which is accessible on the internet through the World Wide Web and which provides multimedia content via a graphical user interface (including, but not limited to Facebook, Twitter, LinkedIn, Pinterest, etc.).
- 1.6 “Service Agreement” means the Service Agreement payable for the Services as agreed between ITJEDI and the Client in accordance with clause 5 below.
- 1.7 “Support” means to provide direct support to the Client for technical issues. Support includes the following services:
(a) attending onsite at the Client’s premises;
(b) any time spent to resolve any issues with the Client’s computer system created by any operator error on the part of the Client or any action of any third parties whether authorised or unauthorised by the Client;
(c) resolving any issues which are solely caused by the actions of third parties and originate outside of the Client’s computer system e.g. problems that relate to the supply of services by the Client’s internet service provider.
- 1.8 “Prohibited Content” means any content on any media (including advertising, posts, comments, etc.) that:
(a) is, or could reasonably be considered to be, in breach of the Broadcasting Act 1989; the Consumer Guarantees Act 1993; or any other applicable law or applicable industry code; or
(b) contains, or could reasonably be considered to contain, any misrepresentations; or is, or could reasonably be considered to be, misleading or deceptive, likely to mislead or deceive or otherwise unlawful; or
(c) is, or could reasonably be considered to be, in breach of any person’s Intellectual Property Rights.
- 1.9 “Confidential Information” means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, “**Personal Information**” such as: name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.10 “Charges” means the Charges payable (plus any Goods and Services Tax (“GST”) where applicable) for the Goods as agreed between ITJEDI and the Client in accordance with clause 5 below.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts Delivery of the Goods.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges that the supply of Goods on credit shall not take effect until the Client has completed a credit application with ITJEDI and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods request exceeds the Clients credit limit and/or the account exceeds the payment terms, ITJEDI reserves the right to refuse Delivery.
- 2.6 None of ITJEDI’s agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of ITJEDI in writing nor is ITJEDI bound by any such unauthorised statements.
- 2.7 Once accepted by the Client, ITJEDI’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, ITJEDI shall not be responsible for errors or omissions due to oversight or misinterpretation of those instructions.
- 2.8 Where ITJEDI gives any advice, recommendation, information, assistance or service provided by ITJEDI in relation to Services supplied is given in good faith to the Client, or the Client’s agent and is based on ITJEDI’s own knowledge and experience and shall be accepted without liability on the part of ITJEDI. Where such advice or recommendations are not acted upon then ITJEDI shall require the Client or their agent to authorise commencement of the Services in writing. ITJEDI shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
- 2.9 These terms and conditions may be meant to be read in conjunction with ITJEDI’s ‘Service Agreement’, and if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.

ITJEDI Limited – Terms & Conditions of Trade

- 2.10 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.
- 2.11 Where the context so permits:
- (a) reference to the singular shall be deemed to include references to the plural also and vice versa; and
 - (b) references to any one gender shall be deemed to include references to the other gender.
- 3. Errors and Omissions**
- 3.1 The Client acknowledges and accepts that ITJEDI 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 ITJEDI in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by ITJEDI 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 ITJEDI; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.
- 4. Change in Control**
- 4.1 The Client shall give ITJEDI 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 and contact phone or fax number/s, change of trustees or business practice). The Client shall be liable for any loss incurred by ITJEDI as a result of the Client's failure to comply with this clause.
- 5. Charges and Payment**
- 5.1 At ITJEDI's sole discretion the Charges shall be either:
- (a) as indicated on any invoice provided by ITJEDI to the Client; or
 - (b) the Charges as at the date of Delivery of the Goods for the labour costs associated with the installation according to ITJEDI's current price list; or
 - (c) ITJEDI's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days;
 - (d) as per ITJEDI's set non-refundable monthly Charges for the Services ("Service Agreement"), which will be as stipulated (including when due and payable) by ITJEDI in the Service Agreement.
- 5.2 *Additional and/or Varied Services:*
- (a) ITJEDI agrees that there may be charges in the preparation of the initial quotation, 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 ITJEDI's sole discretion) which will be charged for on the basis of ITJEDI's standard hourly rates (and double such rate for any Services provided outside ITJEDI's normal business hours); and
 - (b) ITJEDI reserves the right to amend the Charges as a result of increases beyond our reasonable control in the cost of materials or labour (e.g. third-party suppliers' costs, transport, freight, insurance, duty, taxes and levies etc.), or due to currency exchange rate fluctuations.
- 5.3 Variations will be charged for on the basis of ITJEDI's quotation, and will be detailed in writing, and shown as variations on ITJEDI's invoice. The Client shall be required to respond to any variation submitted by ITJEDI within ten (10) working days. Failure to do so will entitle ITJEDI to add the cost of the variation to the Charges. Payment for all variations must be made in full at the time of their completion.
- 5.4 At ITJEDI's sole discretion a non refundable deposit may be required.
- 5.5 Time for payment for the Goods being of the essence, the Charges will be payable by the Client on the date/s determined by ITJEDI, which may be:
- (a) on Delivery of the Goods;
 - (b) by way of instalments/progress payments in accordance with ITJEDI's payment schedule;
 - (c) for certain approved Clients, due twenty (20) days following the end of the month in which a statement is emailed to the Client's address or address for notices;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by ITJEDI.
- 5.6 Payment may be made by electronic/on-line banking or by any other method as agreed to between the Client and ITJEDI. No cheques will be accepted.
- 5.7 ITJEDI may in its discretion allocate any payment received from the Client towards any invoice that ITJEDI determines and may do so at the time of receipt or at any time afterwards. On any default by the Client ITJEDI may re-allocate any payments previously received and allocated. In the absence of any payment allocation by ITJEDI, payment will be deemed to be allocated in such manner as preserves the maximum value of ITJEDI's Purchase Money Security Interest (as defined in the PPSA) in the Goods and/or Services (where applicable).
- 5.8 The Client shall not be entitled to set off against, or deduct from the Charges, any sums owed or claimed to be owed to the Client by ITJEDI nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.9 Unless otherwise stated the Charges does not include GST. In addition to the Charges, the Client must pay to ITJEDI an amount equal to any GST ITJEDI must pay for any supply by ITJEDI under this or any other contract for the sale of the Goods. 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 Charges. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Charges except where they are expressly included in the Charges.
- 6. Delivery of Goods**
- 6.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that ITJEDI (or ITJEDI's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 6.2 At ITJEDI's sole discretion the cost of Delivery is included in the Charges.

ITJEDI Limited – Terms & Conditions of Trade

- 6.3 ITJEDI may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.4 The Client shall ensure that ITJEDI has clear and free access to the site at all times to deliver the Goods.
- 6.5 The Client acknowledges and accepts that:
- (a) ITJEDI's driver may assist with unloading only; and
 - (b) where access and labour are not available then ITJEDI at their discretion may charge a handling fee which be shown as a variation on the invoice; and
 - (c) ITJEDI shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of ITJEDI.
- 6.6 In the event that the Goods are to be installed by ITJEDI the Client agrees to make the premises, and access thereto, available immediately upon request by ITJEDI. It is the Client's responsibility to provide electricity and have a clear and safe area for the purposes of installation.
- 6.7 Any time specified by ITJEDI for Delivery of the Goods is an estimate only and ITJEDI will not be liable for any loss or damage incurred by the Client as a result of Delivery being late. However both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that ITJEDI is unable to supply the Goods as agreed solely due to any action or inaction of the Client, then ITJEDI shall be entitled to charge a reasonable fee for redelivery and/or storage.

7. Risk and Limitation of Liability for Client Data

- 7.1 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.
- 7.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, ITJEDI is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by ITJEDI is sufficient evidence of ITJEDI's rights to receive the insurance proceeds without the need for any person dealing with ITJEDI to make further enquiries.
- 7.3 If the Client requests ITJEDI to leave Goods outside ITJEDI's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.
- 7.4 The Client acknowledges that all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in ITJEDI's or manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the Contract, unless expressly stated as such in writing by ITJEDI.
- 7.5 The Client acknowledges and agrees that ITJEDI shall not be held responsible or liable for:
- (a) any loss, corruption, or deletion of files or data (including, but not limited to, software programmes) resulting from illegal hacking of Services provided by ITJEDI. ITJEDI will endeavour to restore the files or data (at the Client's cost), and it is the sole responsibility of the Client to back-up any data which they believe to be important, valuable, or irreplaceable prior to ITJEDI providing the Services. The Client accepts full responsibility for the Client's software and data, and ITJEDI is not required to advise or remind the Client of appropriate backup procedures (unless included as part of the Services);
 - (b) any loss or damage to the Client's software or hardware caused by any 'updates' provided for that software.
- 7.6 The Client acknowledges that any advice or recommendations by ITJEDI are provided on the basis of ITJEDI's industry knowledge and experience only and shall not be deemed as specialist advice.
- 7.7 ITJEDI, its directors, agents or employees will not be liable in any way 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 ITJEDI to the Client.
- 7.8 The Services (and any associated software) are provided on an "as is, as available" basis. ITJEDI specifically disclaims any other warranty, express or implied, including any warranty of merchantability or fitness for a particular purpose.

8. Hosting and Support Services

- 8.1 Hosting and Support Services shall only be used by the Client for lawful purposes. Any use which violates any applicable national or international laws is strictly prohibited (e.g. posting or transmitting any unlawful, threatening, abusive, libellous, defamatory, obscene, offensive, indecent, pornographic, profane, or otherwise objectionable information of any kind – including, but not limited to, any transmission constituting or encouraging conduct that would constitute a criminal offense or give rise to civil liability).
- 8.2 Hosting and Support Services exclude domain registrations and SSL Certificates, and where the Client is changing from another hosting provider the install and set-up, which shall be charged to the Client additionally.
- 8.3 ITJEDI will make best efforts to ensure that the Client receives continual and uninterrupted Services (including network or hosting servers) during the term of this Contract, however ITJEDI does not in any way warrant or otherwise guarantee the availability of the Services, which shall be subject to regularly scheduled maintenance cycles, and many events/circumstances beyond the control of ITJEDI. In no event though, shall ITJEDI be liable to the Client for damages (including loss of income) resulting from or in relation to any failure or delay (including server downtime, programming errors, lack of connection or slow connection) of ITJEDI to provide Services under this Contract, or any loss of data, if such delays or failures are due to circumstances beyond our control. Such a failure or delay shall not constitute a default under this Contract.
- 8.4 ITJEDI may, at their sole discretion, limit or deny access to the Services is, in the judgement of ITJEDI, such limitations or denials of access are required to assure the security of the network, the integrity of the network structure, or to prevent damage to the network.
- 8.5 **Client's Obligations:**
- (a) **the Client will**, at its sole cost and expense:
 - (i) maintain adequate security precautions in connection with the Client's use of the Services (including but not limited to failure to use/maintain anti virus software, accessibility to the data via insecure internet connections, insecure passwords or unsecure access to passwords, leaving active connection to the hosted solution unattend or any other event which on the basis of a reasonable test would in the opinion of ITJEDI be inadequate etc);
 - (ii) ensure that ITJEDI at all times is granted all necessary licences, permissions and access reasonably required by ITJEDI to perform the Hosting and Support and Additional Support including without limitation:

- (A) physical access to any relevant premises and hardware;
 - (B) logon and password access to any relevant computer systems; and
 - (C) remote online access to any relevant computer systems where available.
- (iii) is responsible for any fees payable and due to previous hosting organisations engaged by the Client;
- (b) failure by the Client to comply with clause 8.5(a) will entitle ITJEDI, at its option, to suspend the Hosting and Support and Additional Support without liability until such time as clause 8.5(a) is complied with.
- (c) **the Client will not:**
- (i) logon to an account that the Client is not authorised to access;
 - (ii) access data or take any action to obtain services not intended for the Client;
 - (iii) attempt to probe, scan or test the vulnerability of any system, subsystem or network;
 - (iv) tamper, hack, modify or otherwise corrupt or breach security or authenticity measures without proper authorisation;
 - (v) send spam or other duplicative or unsolicited messages in violation of applicable laws including without limitation the Unsolicited Electronic Messages Act 2017;
 - (vi) do anything that prevents or hinders ITJEDI from providing Hosting and Support Services to any other person.
- (d) the Client acknowledges that spamming (i.e. the sending of unsolicited email), email address cultivation, or any unauthorised collecting of email addresses without prior notification of the email address owner is strictly prohibited.
- (e) ITJEDI at its sole discretion acting reasonably shall be entitled to determine when there has been a breach of clause 8.5(c) and without limiting any other provision of these terms and conditions, ITJEDI shall be entitled without liability to take such actions as it deems appropriate in the circumstances.

8.6 **Network Traffic:**

- (a) Network traffic shall be measured by ITJEDI and may include all forms of traffic to and from hosted servers.

8.7 **Limitation of Liability for Hosting and Support Services:**

- (a) in consideration of clause 26.3, in the event the Hosting and Support Services provided to the Client are disrupted or malfunction for any reason, ITJEDI's liability shall be limited to damages which under no circumstances shall exceed the amount due and payable by the Client to ITJEDI for the Hosting and Support Services during the period of disruption or malfunction.
- (b) the Client acknowledges that for ITJEDI to carry out such Maintenance Services the Hosted Services will not be available during this time. To the best of its ability ITJEDI will endeavour to:
- (i) keep any such down time to the absolute minimum necessary to carry out such maintenance;
 - (ii) wherever reasonably possible to do so, schedule such down time for weekends; and
 - (iii) wherever reasonably possible to do so, provide the Client with at least three (3) days prior written notice of any such down time.
- (c) without in any way limiting the effect of clause 7 or any other provision of these terms and conditions, ITJEDI will make reasonable efforts to ensure that as part of the Hosting and Support Services nightly backups ("Backups") occur which are stored for sixty (60) days and ITJEDI, however where the Client chooses not to accept the option of Backups executed by ITJEDI then it shall be the Client's responsibility to activate regular Backups themselves. ITJEDI will not be liable for any loss or damages where the Client fails to execute the said Backups.
- (d) work required by ITJEDI to recover information from any Backup will incur ITJEDI's then standard service fee for such work provided that no charge will be made where such recovery is required solely due to the direct fault of ITJEDI.

8.8 **Maintenance:**

- (a) subject to sub-clause 8.8(b), ITJEDI will provide the Maintenance Services in accordance with the maintenance terms set out in ITJEDI's maintenance schedule.
- (b) the Client will procure all necessary authorisations, licences and consents to enable ITJEDI to have access to the hosted servers in order to provide the Maintenance Services.

9. **Support Services**

9.1 **Support Requests**

- (a) if the Client requires Support then the Client must request such Support from ITJEDI ("Support Request"), provided that for:
- (i) non-urgent Support the Client must contact ITJEDI by email on support@itjedi.co.nz ("Support Email") and provide detailed information outlining the issue in respect of which they require Support and the name and contact details of the person to whom ITJEDI should respond or contact for further clarification of the Support Request; and
 - (ii) urgent Support the Client must contact ITJEDI and leave a detailed message outlining the issue in respect of which they require Support and the name and contact details of the person to whom ITJEDI should respond or contact for further clarification of the Support Request.
- (b) ITJEDI will make efforts to respond to a Support Request received during the support hours of 0830-1700 Monday to Friday ("Support Hours") within two (2) hours unless the Client is notified otherwise at the time of lodging the Support Request. ITJEDI will then make efforts to provide a resolution to the issue in question within a timeframe reflective of the severity of the issue. Any day that is a Saturday, Sunday or public holiday in New Zealand is regarded as being outside of Support Hours, unless otherwise stated.

9.2 **After Hours Support**

- (a) Subject to any confirmed After Hours Support in accordance with ITJEDI's Service Agreement, ITJEDI will provide the Client with after hours support for any incident classified as urgent under the Support requirements;
- (b) Clients that do not have a SLA in place ITJEDI will ensure to supply appropriate support when necessary i.e. datacentre wide failure;
- (c) After hours Support will only be supplied for issues defined as critical Response Times for the full remote Support or full Support;
- (d) The provision of Support outside of Support Hours in response to a Support Request will be entirely at ITJEDI's discretion, acting reasonably, on the basis of:
- (i) the information provided to ITJEDI as part of the Support Request;
 - (ii) ITJEDI's current available resources which would enable it to provide the Support as requested and;

ITJEDI Limited – Terms & Conditions of Trade

	Response Time	Resolution or Action Time
Critical	0.5 hours	1 hour
Urgent	1 hour	2 hours
Normal	4 hours	12 hours
Non-Urgent	8 hours	24 hours

(e) whether ITJEDI believes such requested Support could be supplied during the next period of Support Hours with a minimum of disruption and inconvenience to the Client.

9.3 The hours worked after hours will be charged at ITJEDI's standard after hours rate specified on the Service Agreement.

10. Domain Registration

- 10.1 Where ITJEDI is to register a domain name on the Client's behalf, ITJEDI cannot guarantee the availability of the domain name, nor assume a successful registration or such a name.
- 10.2 ITJEDI will not be responsible for the renewal of any domain name registration unless specifically requested to do so by the Client.
- 10.3 The Client will be responsible for complying with all terms and conditions relating to any registered domain name, such as may be required by the 'Registry' that is responsible for administering the registration of such domain name.

11. Title

- 11.1 ITJEDI and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid ITJEDI all amounts owing to ITJEDI; and
 - (b) the Client has met all of its other obligations to ITJEDI.
- 11.2 Receipt by ITJEDI 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.
- 11.3 It is further agreed that until ownership of the Goods passes to the Client in accordance with clause 11.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to ITJEDI on request;
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for ITJEDI and must pay to ITJEDI 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 ITJEDI and must pay or deliver the proceeds to ITJEDI 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 ITJEDI and must sell, dispose of or return the resulting product to ITJEDI as it so directs;
 - (e) the Client irrevocably authorises ITJEDI to enter any premises where ITJEDI believes the Goods are kept and recover possession of the Goods;
 - (f) ITJEDI 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 ITJEDI;
 - (h) ITJEDI may commence proceedings to recover the Charges of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

12. Personal Property Securities Act 1999 ("PPSA")

- 12.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Goods and/or collateral (account) – being a monetary obligation of the Client to ITJEDI for Services – that have previously been supplied and that will be supplied in the future by ITJEDI to the Client.
- 12.2 The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which ITJEDI may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, ITJEDI for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of ITJEDI; and
 - (d) immediately advise ITJEDI 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.
- 12.3 ITJEDI and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 12.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA.
- 12.5 Unless otherwise agreed to in writing by ITJEDI, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 12.6 The Client shall unconditionally ratify any actions taken by ITJEDI under clauses 12.1 to 12.5.
- 12.7 Subject to any express provisions to the contrary (including those contained in this clause 12), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

13. Security and Charge

- 13.1 In consideration of ITJEDI agreeing to supply the Goods, 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 these terms and conditions (including, but not limited to, the payment of any money).
- 13.2 The Client indemnifies ITJEDI from and against all ITJEDI's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising ITJEDI's rights under this clause.
- 13.3 The Client irrevocably appoints ITJEDI and each director of ITJEDI as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Client's behalf.

14. Defects

- 14.1 The Client shall inspect the Goods on Delivery and shall within two (2) days of Delivery (time being of the essence) notify ITJEDI of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford ITJEDI an opportunity to inspect the Goods within a reasonable time following Delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which ITJEDI has agreed in writing that the Client is entitled to reject, ITJEDI's liability is limited to either (at ITJEDI's discretion) replacing the Goods or repairing the Goods.
- 14.2 Goods will not be accepted for return other than in accordance with 14.1 above, and provided that:
- (a) ITJEDI 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 date; and
 - (c) ITJEDI 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.
- 14.3 ITJEDI will not accept the return of Goods for credit.

15. Warranty

- 15.1 For Goods not manufactured by ITJEDI, the warranty shall be the current warranty provided by the manufacturer of the Goods. ITJEDI 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.

16. Consumer Guarantees Act 1993

- 16.1 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 supply of Goods by ITJEDI to the Client.

17. Intellectual Property

- 17.1 Where ITJEDI has designed, drawn or developed Services for the Client, ITJEDI retains full Intellectual Property ownership of the Services, including the copyright in any designs and drawings and documents, and ITJEDI hereby grants to the Client an irrevocable, non-exclusive and non-transferable licence to use the Services solely in relation to the operation of the Client's own business, conditional upon the Client fulfilling their obligations under this Contract (including, but not limited to, the full payment of the Charges).
- 17.2 Notwithstanding anything herein, the Intellectual Property rights in ITJEDI's Services do not vest in the Client and there is no assignment of these Intellectual Property rights to the Client. ITJEDI hereby grants to the Client an irrevocable, non-exclusive and non-transferable licence to use and reproduce the Services for the purposes of this Contract only, and solely for the operation of the Client's business however, the Client shall not use nor make copies of such Intellectual Property in connection with any work or business other than the work or business specified in writing to ITJEDI unless express approval is given in advance by ITJEDI. Such license shall terminate on default of payment or any other terms of this Contract by the Client.
- 17.3 The Client agrees that ITJEDI may (at no cost) use for the purposes of marketing or entry into any competition, any documents, photographs, designs, drawings or Goods which ITJEDI has created for the Client or produced whilst undertaking the Services.

18. Default and Consequences of Default

- 18.1 An event of default ("**Default Event**") occurs if:
- (a) any money payable under this Contract is not paid before or on the due date for payment;
 - (b) the Client has exceeded any applicable credit limit provided by ITJEDI;
 - (c) the Client fails to observe and perform any of the Client's covenants, other than the failure to pay money, and such failure continues for more than five (5) days after ITJEDI had given the Client notice requiring the Client to remedy the breach;
 - (d) the Client, being an individual, commits an act of bankruptcy, is declared mentally ill or is convicted of a criminal offence or dies;
 - (e) a receiver, or an agent in possession for a mortgagee, is appointed in respect of any property of the Client;
 - (f) a mortgagee takes possession of any property of the Client;
 - (g) any execution or similar process is made against the property of the Client;
 - (h) an application is made, a resolution is passed or a meeting is convened for the purpose of considering a resolution for the Client to be wound up, unless the winding up is for the purpose of reconstruction or amalgamation;
 - (i) a compromise or arrangement is made between the Client and its creditors;
 - (j) a resolution is passed, or a meeting is convened for the purpose of considering a resolution for the Client to be placed under official management;
 - (k) the Client admits in writing its inability to pay its debts;
- 18.2 On the occurrence of an Default Event:
- (a) ITJEDI may:
 - (i) take possession of the Goods with, or without notice to the Client, in accordance with clause 11.3(c);

ITJEDI Limited – Terms & Conditions of Trade

- (ii) charge interest on overdue invoices, which shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at ITJEDI's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment;
- (b) if the Client owes ITJEDI any money, the Client shall indemnify ITJEDI from and against all costs and disbursements incurred by ITJEDI in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, ITJEDI's collection agency costs, and bank dishonour fees);
- (c) further to any other rights or remedies ITJEDI may have under this Contract, if the Client has made payment to ITJEDI 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 ITJEDI under this clause 18.2(c) where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.

19. Confidentiality

- 19.1 Subject to clause 19.2, 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.
- 19.2 Both parties agree to:
 - (a) use the Confidential Information of the other party only to the extent required for the purpose it was provided; and
 - (b) not copy or reproduce any of the Confidential Information of the other party in any way; and
 - (c) only disclose the other party's Confidential Information to:
 - (i) employees and third-party providers who need access to the information and who have agreed to keep it confidential; and
 - (ii) its legal advisers and insurance providers if those persons undertake to keep such information confidential; and
 - (iii) 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.
- 19.3 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.
- 19.4 Confidential Information excludes information:
 - (a) generally available in the public domain (without unauthorised disclosure under this Contract); and
 - (b) received from a third party entitled to disclose it; and
 - (c) that is independently developed.
- 19.5 The obligations of this clause 19 shall survive termination or cancellation of this Contract.

20. Cancellation and Termination

- 20.1 Without prejudice to any other remedies ITJEDI may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions ITJEDI may suspend or terminate the supply of Goods to the Client. ITJEDI will not be liable to the Client for any loss or damage the Client suffers because ITJEDI has exercised its rights under this clause.
- 20.2 Either party may, without liability, cancel these terms and conditions or cancel provision of the Services:
 - (a) if there is no Contract term specified, at any time by giving thirty (30) days' notice to the other party; and
 - (b) if a contract term is specified, at any time after the end of the Contract term by giving thirty (30) days' notice to the other party.
- 20.3 ITJEDI may, in addition to their right to cancel under clause 20.1:
 - (a) do so at any time:
 - (i) prior to the commencement of the Services, by giving notice to the Client, in the event ITJEDI determine it is not technically, commercially or operationally feasible to provide the Services to the Client; and
 - (ii) in the event the Client materially breaches these terms and conditions, and such breach is not capable of remedy.
- 20.4 The Client may cancel the Contract for breach if ITJEDI materially fails to:
 - (a) provide the Services as agreed and fail to remedy the breach within ten (10) days of receiving notification of the failure from the Client; or
 - (b) meet any other obligations stated in the Contract and do not remedy that failure within thirty (30) days of receiving notification of the failure from the Client; and
 - (c) the Client accepts that ITJEDI shall be entitled to claim from the Client, all monies due and payable up to the date of termination (including but not limited to, any substantiated costs reasonably incurred by ITJEDI, such as third party disconnection charges etc.).
- 20.5 **Service Agreement:**
 - (a) where this Contract relates to a Service Agreement, all payments shall fall due, as per the payment schedule; and
 - (b) to terminate the Service Agreement on, or after the current annual term, the Client must give ITJEDI not less than sixty (60) working days' notice prior to the current anniversary date of this Contract; and
 - (c) the Services will then terminate at the end of the then current annual term. If the Client does not terminate the Services on expiry of the current annual term, the Services shall revert to a month-by-month basis charge until otherwise agreed by both parties. Any additional Services shall become due and payable until notice (as herein) is received; or
 - (d) where in the event of the premature termination of Service Agreement by ITJEDI, as a result of default by the Client, the Client shall be responsible for the immediate payment of the following sums:
 - (i) all monies due and payable up to the date of termination; and
 - (ii) all other sums owing by the Client under the Service Agreement due directly as a result of the default and termination of the Service Agreement, which shall be calculated on the basis of any substantiated costs reasonably incurred by ITJEDI, or a minimum of twenty percent (20%) of the remainder of the Charges under the Service Agreement, whichever is the lesser, where a fixed term applies (to cover such costs imposed by ITJEDI's third party suppliers that form part of, the Service Agreement, without any margin added by ITJEDI thereto); or
 - (e) where in the event of the premature termination of the Service Agreement by the Client, as a result of default by ITJEDI, ITJEDI shall be responsible for the immediate payment of all losses, costs or other liabilities incurred by the Client directly as a result of the default and termination of the Service Agreement, which shall be calculated on the basis of any substantiated costs reasonably incurred by the

ITJEDI Limited – Terms & Conditions of Trade

Client directly as a result of the default or termination of the Service Agreement, including without limitation all costs associated with sourcing and procuring the services of the same or substantially similar nature and quality to the Services from a third party service provider, or a minimum of twenty percent (20%) of the remainder of the Charges payable by the Client to ITJEDI under the Service Agreement, whichever is the lesser, where a fixed term applies.

20.6 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

21. Privacy Policy

21.1 All emails, documents, images or other recorded information held or used by ITJEDI is Personal Information as defined and referred to in clause 21.3 and therefore considered confidential. ITJEDI acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). ITJEDI acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Clients Personal Information, held by ITJEDI that may result in serious harm to the Client, ITJEDI will notify the Client in accordance with the Act and/or the GDPR. Any release of such personal information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.

21.2 Notwithstanding clause 21.1, privacy limitations will extend to ITJEDI in respect of Cookies (meaning small files which are stored on a user's computer. They are designed to hold a modest amount of data (including personal information) specific to a particular client and Website, and can be accessed either by the web server or the client's computer).where any browsing by the Client is transpires directly from ITJEDI's Website. ITJEDI agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:

- (a) IP address, browser, email client type and other similar details;
- (b) tracking Website usage and traffic; and
- (c) reports are available to ITJEDI when ITJEDI sends an email to the Client, so ITJEDI may collect and review that information ("collectively Personal Information")

In order to enable / disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the Website prior to viewing the Services offered on ITJEDI's Website.

21.3 The Client authorises ITJEDI or ITJEDI's agent to:

- (a) access, collect, retain and use any information about the Client;
 - (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or 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 ITJEDI from the Client directly or obtained by ITJEDI 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.

21.4 Where the Client is an individual the authorities under clause 21.3 are authorities or consents for the purposes of the Privacy Act 1993.

21.5 The Client shall have the right to request ITJEDI for a copy of the Personal Information about the Client retained by ITJEDI and the right to request ITJEDI to correct any incorrect Personal Information about the Client held by ITJEDI.

22. Service of Notices

22.1 Any written notice given under this Contract shall be deemed to have been given and received:

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

22.2 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.

23. Trusts

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

- (a) the Contract 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 Contract 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 ITJEDI (ITJEDI 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.

24. Dispute Resolution

24.1 All disputes and differences between the Client and ITJEDI touching and concerning this Contract 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.

25. Compliance of Laws

25.1 The Client and ITJEDI shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the services. Furthermore, ITJEDI warrants that any Services and/or content produced are fully compliant with said statutes, regulations and bylaws and SNT requirements.

25.2 The Client shall obtain (at the expense of the Client) all licenses, permits and/or approvals pertaining to the Goods to be installed prior to the Delivery date.

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 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Auckland Courts, New Zealand.

26.3 ITJEDI shall be under no liability whatsoever to the Client for any expenses, claims, costs (including but not limited to legal fees and commissions), damages suffered or incurred by ITJEDI, or indirect and/or consequential loss and / or expense (including loss of profit) suffered by the Client arising out of a breach by ITJEDI of these terms and conditions, caused by any failure by the Client to comply with their obligations under this Contract, or that arise from any claim relating to the Services by any person that the Client authorises to use the Services, or where due to server downtime or programming errors (alternatively ITJEDI's liability shall be limited to damages which under no circumstances shall exceed the Charges).

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

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

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

26.7 The Client agrees that ITJEDI may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to 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 ITJEDI to provide Goods to the Client.

26.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

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