

Terms of Trade for NetCare Limited

The terms of trade set out below govern all of the supplies of goods and services from NetCare Limited ("NCL", "we", "us") to the Customer ("you"). They will replace any terms and conditions contained in any document used by you and purporting to have contractual effect, and your acceptance of any goods or services from NCL indicates your acceptance of these terms of trade. These terms of trade are effective from **1 April 2008** and replace all earlier terms of trade between you and NCL.

1. Delivery and risk

1.1 You are responsible for insurance and risk in the goods from the earlier of the time they are received by a carrier for delivery to you, or the time they are received by you or your agent.

1.2 You agree to pay all delivery costs. If we deliver any order in parts, then each delivery is a separate contract.

1.3 You do not have the right to possess goods until they are delivered to you or collected by you. Where you ask us to deliver goods or software directly to another person, that person takes possession of the goods for you as your agent.

1.4 All claims for shortage or delivery damage must be made to the carrier and to NCL within 7 business days of the date of delivery.

1.5 We will make every effort to ensure delivery of goods, or performance of services, is on time but will not be liable to you for any loss or damage arising in any way from any delay in delivery or performance.

2. Quotations, Orders and Prices

2.1 All prices are subject to alteration without notice.

2.2 Quoted prices are the New Zealand dollar price on date of quotation only, and may be subject to change. Where prices are quoted in overseas currency, you are responsible for any currency fluctuations.

2.3 Unless otherwise stated in writing, all electronic goods (hardware, consumables and software) will be box shipped and it is your responsibility to assemble, configure and install it.

2.4 You agree to pay goods and services tax and any other government duties, levies or taxes in respect of the goods or services.

2.5 All installation and service work is charged out at NCL's rates ruling at the date the service is supplied.

2.6 Orders may be cancelled only if NCL agrees in writing to the cancellation and the order has not been processed. NCL may charge you a cancellation fee.

3. Payments and property

3.1 Unless we have agreed in writing to extend credit to you in another manner, you must pay for all goods in full before delivery or collection, or at NCL's request, set up an irrevocable letter of credit in favour of NCL with a bank approved by NCL's bankers.

3.2 Where we have agreed to extend credit to you, you must pay in full, without deduction or setoff, by the 20th day of the month following the date of invoice. Your payment is made only when funds have fully cleared through the banking system into our bank account.

3.3 If you have not paid in full by the due date, we may charge you interest compounding monthly on the unpaid overdue balance at the rate of 5% per annum above the current overdraft rate charged by our bankers, and we may charge costs (including collection costs and legal costs on a solicitor-client basis) and suspend delivery of further goods or performance of further services until the account is paid.

3.4 Payments which you make to us will be applied first to any amount owing in respect of service work, then to payment for any goods which have been purchased as inventory and which have been sold by you, then to payment for goods supplied by us which have not been sold by you.

3.5 Property and ownership in goods or software licences, whether in their original form or incorporated in or attached to another product, will not pass to you but will remain with NCL until NCL receives payment in full of the purchase price of the goods or software licences and all other amounts that you owe to NCL for any reason.

3.6 Until property passes to you, you shall hold any goods or software in trust for NCL and/or any software licensor, and store and sell them in a manner to enable them to be identified and cross-referenced to particular invoices.

3.7 Unless otherwise notified in writing, where goods are sold to you as inventory or consignment stock for re-supply, you are authorised to sell the goods in the ordinary course of your business, but you must keep the proceeds of any goods sold in a separate account in trust for NCL.

3.8 You must not resell or part with possession of any machinery, equipment or software that we supply for your use before you have paid for it in full, unless we have given you written consent.

3.9 Notwithstanding clauses 3.1 and 3.2 above, all payments shall immediately become due to NCL if we reasonably believe that the information which you have given us in your application for credit is not correct or no longer correct, and you have failed to give us correct information within 5 days of our request, if, without our consent you sell or otherwise dispose of any equipment, machinery or software which have not been paid for, if you become insolvent, commit any act of bankruptcy, or if a receiver, liquidator or statutory manager is appointed over any of your assets or undertaking, if you fail to comply with any of the provisions of clause 4, or if you make or attempt to make an arrangement or composition with creditors.

3.10 Where NCL reasonably believes that any collateral is at risk or that you are or will be in breach of any part of clauses 3 or 4 of this agreement, NCL or its agent may enter your premises without further notice to

you or any other person, to remove any goods which are the property of NCL, including goods or software which are installed in or affixed to other goods, and you indemnify NCL against all costs and claims in respect of its exercise of rights under this clause 3.

4. Security interests

4.1 If we extend credit to you or if you owe us money for any reason, you agree to grant us a security interest in the property that we have supplied to you. You agree that you will do all acts necessary and provide us on request all information we require to register a financing statement over the goods and their proceeds, and that you will advise us immediately in writing of any changes to that information. You waive all rights to receive a copy of any verification statement of a financing statement. The goods and services subject to the security interest will be described on our invoices.

4.2 You agree that you will supply NCL, within 2 business days of its written request, with copies of all security interests registered over your personal property, and you authorise NCL as your agent to request information from any secured party relating to any security interest which is held in any personal property which is or has been in your possession or control.

4.3 You agree that NCL may require you to pay all reasonable costs, including legal costs on a solicitor client basis, associated with the discharge or amendment of any financing statement registered by NCL, whether or not the change was initiated by you.

4.4 If we repossess goods under this agreement, we may retain those goods or dispose of them without notice or statement of account to you or any other person, and, after deducting reasonable costs of sale, we may credit any surplus by way of setoff against any sums owing to us. We will not be obliged to reinstate this agreement or re-supply any repossessed inventory or provide you with a statement of account.

4.5 You authorise us to search the Personal Property Securities Register at any time for any information about you or (if you are a company) your parent or associated companies.

5. NCL Warranties

5.1 Where the New Zealand Consumer Guarantees Act applies to the supply of goods or services under these terms of trade, you may have additional rights under that Act.

5.2 Goods and software are subject to the manufacturers' warranties only. NCL will pass on the benefit of those warranties to you, without itself being directly liable to you under any warranty.

5.3 Where goods are subject to a return to base warranty, you are responsible for returning them to the manufacturer or to NCL, and you may be responsible for additional costs including (but not limited to) freight. Where you require NCL to carry out the warranty service, you agree to pay NCL's service and call-out charges.

5.4 Any warranty may be voided by damage to or misuse of equipment, problems caused by the use or misuse of software, negligent installation or operation, inadequate packaging, cleaning or maintenance, unauthorised repairs, modifications or the use of hardware, software or consumables not supplied by NCL.

5.5 You will not be entitled to the benefit of any warranty if any sum that you owe NCL for any reason is overdue.

5.6 Where the goods or services that you acquire from NCL are not of a kind ordinarily acquired for personal household or domestic use or consumption, or where you acquire, or hold yourself out as acquiring, the goods or services for the purposes of a business, the provisions of the Consumer Guarantees Act 1993 and the conditions, warranties and guarantees set out in the Sale of Goods Act 1908 or the United Nations Convention on Contracts for the International Sale of Goods made at Vienna on 11 April 1980, or implied by common law will not apply and are excluded from these terms of trade.

6. Customer Warranties

6.1 If you acquire any goods or services from NCL for re-supply as, or incorporate or attach any goods or services acquired from NCL into, goods or services ordinarily acquired for personal household or domestic use or consumption ("Consumer Products") you warrant that:

(a) if you supply the Consumer Products directly to an end user/consumer you will do so using terms and conditions of supply which exclude liability for any claims under the Consumer Guarantees Act 1993; and

(b) if your customer acquires the goods for re-supply, your customer and each person in the distribution chain will exclude liability in its contract for supply for any claims under the Consumer Guarantees Act 1993,

6.2 But in each case only where the end user/consumer acquires the Consumer Products for business purposes.

6.3 If you acquire any goods for re-supply outside New Zealand, you warrant:

(a) That to the maximum extent allowable by law, you have excluded NCL's liability to any other person, and;

(b) You have taken out public liability insurance with an insurer acceptable to NCL's insurer, and you will supply NCL or its insurer with proof of that insurance on demand.

6.4 You agree to indemnify NCL against any failure by you, your customers or any person in your distribution chain to properly contract out of liability to business end users/consumers under the Consumer Guarantees Act 1993.

7. Limitation of liability

7.1 NCL will not be responsible for any loss or costs incurred through your failure to back up data.

7.2 NCL will not be liable for any losses of any kind or any delay in supplying goods or services which are caused in whole or in part by force majeure including (but not limited to) any act of God, natural disaster, flood or earthquake, strike, lockout, fire, war, civil commotion,

network service failure, inability to obtain products or supplies including the imposition of any export or import bans, or any other cause beyond its reasonable control. NCL shall not be required to settle a strike or lockout or other industrial disturbance against its wishes in order to benefit from this clause.

7.3 Subject to clause 5.1, NCL's liability shall be limited to the value of any goods, software or services supplied, and none of NCL, its employees, contractors and agents, any manufacturer(s) or developer of the goods, software or any of their materials or components or any suppliers of services, will be liable to you for loss or damage of any kind however that loss or damage is caused or arises. This limitation of liability includes, but is not limited to, costs (including costs of returning goods to NCL or to any manufacturer), loss of data, consequential loss, loss of contracts, loss of profits and damage caused by or arising from delays in manufacturing or delivery, faulty or delayed installation, unreasonable use, negligence (including a failure to do something which should have been done or to prevent something from happening), faulty specifications and design, and faulty materials or components of the goods.

8. Intellectual property rights

8.1 Neither NCL nor its suppliers transfers any right, title or interest in any copyright, trademarks, or other intellectual property rights relating to any of the goods or software to you.

8.2 Where NCL produces or adapts software for you or designs equipment for you, you agree that NCL will have copyright in that new software or adaptation.

8.3 Where you require NCL to modify or adapt software, you warrant that NCL has the right to make that modification or adaptation, and you indemnify NCL against all costs and losses of any kind, including claims from third parties, which arise as a result of NCL carrying out your requests.

9. Personal Information

9.1 NCL will use any personal information that you supply for credit, administration, service and marketing

purposes. You have the right of access to, and to ask for correction of, your personal information.

9.2 You authorise any person or company to provide NCL with any information it may require in response to your application for credit and/or other enquiries, and you authorise NCL to search the Personal Property Securities Register for any information about you (or, in the case of a company) your parent or associated companies.

10. General Conditions

10.1 NCL reserves the right to change these terms of trade from time to time by notice to you in writing.

10.2 If NCL fails to enforce any terms or to exercise its rights under these terms of trade at any time, NCL has not waived those rights.

10.3 If any provision of these terms of trade is held to be invalid or unenforceable for any reason, the remaining provisions shall remain in full force and effect and the parties shall adjust their respective rights and obligations in accordance with the spirit and intent of the parties as shown by these terms of trade.

10.4 Any agreement between you and NCL is governed by the laws of New Zealand. You agree that any dispute is subject to the exclusive jurisdiction of the New Zealand courts although NCL reserves the right to commence any proceedings against you in any other court.

11. Data Backup & Anti-virus Updates

I acknowledge that NCL cannot keep my data secure under all circumstances, that I am responsible for data backup and Anti-Virus software updates, and that I cannot make a claim based on loss of data against NCL, its employees, agents or sub-contractors if I have failed to back up my data or have not kept my Anti-Virus software up to date.

Signed by: _____

Company: _____

Date: _____