

SCHOLATEC LIMITED TERMS AND CONDITIONS OF SALE AND USAGE

1. Interpretation

1.1. In these Conditions:

'Buyer'	means the person who accepts a quotation of the Company for the sale and/or installation of the Goods or whose order for the Goods is accepted by the Company
'Services'	means the software, content, virtual item, documentation, mobile application, plugin, websites, webpages and software services (including any installments and modifications of the Services or any parts for them) which the Company is to supply and/or install in accordance with these Conditions
'Products'	means the hardware, consumables and any related products (including any installments and modifications of the Products or any parts for them) which the Company is to supply and/or install in accordance with these Conditions
'Goods'	means the Products and the Services which the Company is to supply and/or install in accordance with these Conditions
'Company'	means SCHOLATEC LIMITED
'Conditions'	means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Company
'Contract'	means the contract for the purchase and sale of the Goods
'Writing'	includes telex, cable, facsimile transmission electronic data interface and comparable means of communication
'Business Day'	means a day that is not a Saturday, Sunday or public holiday in England, Wales and New Zealand or, for deliveries of Goods, at the place of delivery
'Force Majeure'	means any circumstance beyond the reasonable control of a party which results in a party being unable to observe or perform on time an obligation under these Terms
'GST'	has the same meaning as in the Goods & Services Tax Act 1985 or any Act in amendment or substitution of that Act from time to time
'PPSA'	means the Personal Property Securities Act 1999
'Terms'	means these terms and conditions of sale
'System'	means equipment and software relating to the operation of the Maintained Goods
'Maintenance Charges'	means the charges to be paid by the Buyer to the Company for Maintenance Services as set out in the relevant Contract
'Maintenance Services'	means the preventative, diagnostic, repair or replacement activities to be carried out by the Company
'Maintenance Site'	means the address at which Maintained Goods are located as specified in the relevant Contract or is otherwise notified in writing by Buyer to the Company
'Maintained Goods'	means the Goods for which the Buyer requires Maintenance Services as specified in the relevant Contract
'Documentation'	means the documentation, instructions, manuals, user guides, and other documents made available by the Company that relate to the Goods

- 1.2. Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time
- 1.3. The headings in these Conditions are for convenience only and shall not affect their interpretation

2. Basis of the sale

- 2.1. The Company shall sell and/or install and the Buyer shall purchase the Goods in accordance with any written quotation given by the Company which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Company, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer
- 2.2. No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Company
- 2.3. Any advice or recommendation given by the Company or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Company is followed or acted upon entirely at the Buyer's own risk, and the Company shall not be liable for any such advice or recommendation which is not so confirmed
- 2.4. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company
- 2.5. All descriptions, illustrations and particulars issued by the Company in catalogues, price lists, advertising matter and specifications are by way of general description and approximate only and shall not form part of any Contract or give rise to any liability on the part of the Company
- 2.6. It is the Buyer's responsibility to establish that the Goods ordered are adequate and suitable for the purpose for which they are required and no liability whatsoever is accepted should the Goods not prove adequate or suitable for that purpose. The Buyer must do so within a sufficient time to enable the Company to perform the Contract in accordance with its terms

3. Orders and specifications

- 3.1. All orders will be subject to acceptance by the Company, which may decline an order or accept an order in whole or part at its absolute discretion. Buyer acknowledges that acceptance of an order by the Company will not imply that the Company will accept any future order(s) placed by Buyer
- 3.2. No order submitted by the Buyer shall be deemed to be accepted by the Company unless and until confirmed in Writing by the Company's authorised representative
- 3.3. If the Goods are to be manufactured or any process is to be applied to the Goods by the Company in accordance with the Buyer's specification, the Buyer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Buyer in settlement of any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual property rights of any other person which results from the Company's use of the Buyer's specification
- 3.4. The Company reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Company's specification, which do not materially affect their quality or performance
- 3.5. No order which has been accepted by the Company may be cancelled by the Buyer except with the agreement in Writing of the Company and on terms that the Buyer shall fully indemnify the Company against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation

4. Price of the Goods

- 4.1. The price of the Goods shall be the price specified by the Company in its quotation or in the Company's written acceptance of the Buyer's order and shall not be determined by the prices contained in catalogues, advertising material or price lists which are intended only as a guide
- 4.2. The Company reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Company which is due to any factor beyond its control (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate information or instructions
- 4.3. Except as otherwise stated under the terms of any quotation or in any price list of the Company, and unless otherwise agreed in Writing between the Buyer and the Company, all prices are given by the Company on an ex works basis, and where the Company agrees to deliver the Goods otherwise than at the Company's premises, the Buyer shall be liable to pay the Company's charges for transport, packaging and insurance
- 4.4. The price quoted by the Company is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Company. Buyer must pay GST or any other tax duty, levy, tariff or charge applicable to the supply of the Goods in addition to, and at the same time as, payment of the price. The Company will provide Buyer with a tax invoice as required by law

5. Terms of payment

- 5.1. Subject to any special terms agreed in Writing between the Buyer and the Company, the Company shall be entitled to payment on delivery or collection of the Goods as the case may be. If the Buyer wrongfully fails to take delivery of the Goods or to collect them, as the case may be, the Company shall be entitled to payment for the Goods at any time after the Company has tendered delivery or notified the Buyer that the Goods are ready for collection as the case may be and rendered an invoice for same
- 5.2. Buyer must not withhold payment or make any deduction from the invoiced price or any other amount owing to the Company without the Company's prior written consent
- 5.3. Receipt of any amount will not constitute payment until such time as the amount is paid or honoured in full
- 5.4. If the Buyer fails to make any payment when due, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:
- 5.4.1. cancel the Contract or suspend any further deliveries to the Buyer whether under the same contract or any other contract between the Buyer and the Company;

- 5.4.2. appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Buyer); and
- 5.4.3. charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of two percent (2%) per month compounded on all sums due to it until payment in full is made
- 5.4.4. recover from Buyer all legal and other costs incurred by the Company arising from Buyer's default in payment and the collection of any overdue monies

6. Delivery

- 6.1. The Company is entitled to refuse to deliver the Goods to Buyer if there are any outstanding monies owing to the Company
- 6.2. Buyer agrees to accept delivery of the Goods at any time between 9.00am to 5.00pm on a Business Day
- 6.3. Unless otherwise agreed in Writing, delivery of the Goods shall be made by the Company delivering the Goods to the Buyer's premises or, if some other place for delivery is agreed upon by the Company, the Company delivering the Goods shall deliver to that place
- 6.4. Any dates quoted for delivery of the Goods are approximate only and the Company shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence. The Goods may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Buyer
- 6.5. The Company will not be liable for any loss suffered by Buyer arising out of any delay or failure to deliver the Goods (or any part of them) or failure to deliver in the requested quantities. Buyer will not be entitled to cancel that contract or any other order, Contract or delivery
- 6.6. Where the Goods are to be delivered in installments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the installments in accordance with these Conditions or any claim by the Buyer in respect of any one or more installments shall not entitle the Buyer to treat the Contract as a whole as repudiated
- 6.7. If Buyer does not, or indicates to the Company that it will not, take or accept delivery, then the Goods will be deemed to have been delivered when the Company was willing to deliver them
- 6.8. The Company's liability for any failure to deliver the Goods shall be limited to the excess (if any) the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods
- 6.9. The Company may suspend or cancel delivery of the Goods if the Company reasonably believes that the Goods may cause injury or damage (including for technical, scientific, medical or efficacy reasons) or may infringe the intellectual property rights of any person, or if payments owing from Buyer to the Company remain outstanding. No such suspension or cancellation will in any way constitute admission of liability or fault on the Company's part
- 6.10. If the Buyer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery then, without prejudice to any other right or remedy available to it, the Company may:
 - 6.10.1. store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
 - 6.10.2. sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract

7. Maintenance

- 7.1. The price for consumables used in the provision of Maintenance Services is not included in the Maintenance Charges and must be paid by the Buyer, depending on chosen service level
- 7.2. The Company may from time to time revise the Maintenance Charges by notice to the Buyer at least 30 days before the variation comes into effect
- 7.3. The Buyer acknowledges and agrees that the Company is not obliged in any way to maintain or repair any item:
 - 7.3.1. other than the Maintained Goods;
 - 7.3.2. which has been operated (without the Company's written consent) in a manner not in accordance with the Documentation supplied with the Maintained Goods;
 - 7.3.3. which has suffered physical damage through the Buyer's misuse;
 - 7.3.4. which has been operated (without the Company's prior written consent) outside its technical or environmental specifications;
 - 7.3.5. which has been damaged by electromagnetic, electrostatic or radio frequency interference, or power disturbances, however derived; or
 - 7.3.6. which has suffered damage by being operated with consumable supplies or accessories not approved by the Company or the relevant equipment supplier
- 7.4. Unless otherwise stated in these Terms and Conditions, the Buyer acknowledges and agrees that the Company is under no obligation to provide the following:
 - 7.4.1. the latest version of operating software;
 - 7.4.2. design support for the System comprising hardware and software;
 - 7.4.3. modification of the Maintained Goods for whatever reason;
 - 7.4.4. refurbishment of the Maintained Goods; or
 - 7.4.5. installation of additional equipment or accessories or the removal or relocation of any equipment or accessories (including the Maintained Goods)
- 7.5. Unless otherwise stated in these Terms and Conditions, the Buyer acknowledges and agrees that the Company is under no obligation to provide or replace any of the following items:
 - 7.5.1. wiring and cabling external to the System;
 - 7.5.2. peripheral equipment not forming part of the System;
 - 7.5.3. operating supplies, accessories or paint; or
 - 7.5.4. materials for the purposes of refurbishing the Maintained Goods
- 7.6. The Buyer must:
 - 7.6.1. nominate an appropriate person as a contact person for matters relating to the Maintenance Services and inform the Company of the nominated person's authority to act for the Buyer;
 - 7.6.2. ensure where possible that the Company's vehicles have access to parking on the Maintenance Site;
 - 7.6.3. ensure that the Company's maintenance personnel have free and safe access to the Maintained Goods at all times;
 - 7.6.4. provide without expense to the Company adequate space, light, electric power sockets and access to a telephone;
 - 7.6.5. make available on request the services of any person who operates the Maintained Goods at the Maintenance Site;
 - 7.6.6. notify the Company immediately when the Buyer ceases to be in possession of the Maintained Goods at the Maintenance Site; and
 - 7.6.7. take all necessary precautions to protect the Maintained Goods from physical, environmental and electro-magnetic and electrostatic damage
- 7.7. The Buyer acknowledges that the Company may update or modify any component of the Goods at any time and in its sole discretion without prior notice to the Buyer. The Buyer acknowledges that future versions of the Goods may be incompatible with Services developed using previous versions of the Goods, which may adversely affect the manner in which the Buyer accesses or communicates with the Goods. The Company may provision any updates to any Goods automatically or it may prompt the Buyer to install such updates. If the Company prompts Buyer to install an updated version of any Goods ("Updated Version"), the license granted to the previous versions will be revoked upon release of such Updated Version and Buyer will immediately discontinue all use of, and delete, such previous version

8. Reservation of Rights

- 8.1. The Goods are intended for informational purposes only. They do not constitute legal, financial, professional, medical or healthcare advice or diagnosis and cannot be used for such purposes
- 8.2. The Company grants the Buyer a limited, non-exclusive, non-sublicensable, non-transferable license to access and use the Services solely for the Buyer's internal business operations and subject to the Terms and Conditions, including the definitions and rules set forth in the Contract and the Services Documentation
- 8.3. The Goods are the Company's copyrighted property or the copyrighted property of the Company's licensors or licensees and all right, title, interest, copyright, trademarks, service marks, trade names, trade dress and other intellectual property rights in the Goods (and any derivative works and enhancements thereof developed by or on behalf of the Company) are owned by the Company or the Company's licensors or licensees. The Goods (and any derivative works and enhancements thereof developed by or on behalf of the Company) are protected by copyright and other intellectual property laws and treaties.
- 8.4. Except as the Company specifically agreed in writing, no element of the Goods may be used or exploited in any way other than as is offered to the Buyer.
- 8.5. The Buyer may own the physical media on which elements of the Services are delivered, but the Company retains full and complete ownership of the Services. The Company does not transfer title to any portion of the Services to the Buyer. The Services are licensed, not sold
- 8.6. The Buyer shall not directly or indirectly:
 - 8.6.1. modify or create any derivative works of any Goods or any component of Goods; or
 - 8.6.2. work around any technical limitations in any of the Goods or use any of the Goods in an attempt to, or in conjunction with any device, program, or Services designed to, circumvent technical measures employed to control access to, or the rights in, a content, file, or other work; or
 - 8.6.3. reverse engineer, decompile, decipher, translate, disassemble, or otherwise attempt to access source code of any of the Goods; or
 - 8.6.4. publish, rent, lease, lend, sell, sublicense, distribute, transfer, disclose, or otherwise make any of the Services available to any third party; or
 - 8.6.5. remove or alter any proprietary notices or labels on or in any of the Goods; or
 - 8.6.6. use any of the Goods in connection with the development or transmission of any virus or malicious code; or
 - 8.6.7. use any of the Goods to infringe the rights of the Company or any third party, or in any way that does not comply with all applicable laws; or
 - 8.6.8. use any of the Goods (including to create any Services) in any way that interferes with, disrupts, damages, or accesses in an unauthorized manner the servers, networks, or other properties or services of the Company or any third party, including any mobile communications carrier; or

- 8.6.9. export or re-export, or knowingly permit the export or re-export of, any Goods obtained under this Contract, including without limitation any Documentation and Services, without compliance with any laws applicable to the export or re-export of, any Goods obtained under this Agreement
- 8.7. The Buyer shall comply with:
- 8.7.1. all applicable laws, rules, and regulations,
- 8.7.2. all instructions and requirements set forth in any applicable Documentation, and
- 8.7.3. any applicable third-party terms, any development and distribution environment used by the Buyer
- 8.8. The Buyer is fully responsible for maintaining the security of any Goods. The Buyer will use industry standard security measures to prevent unauthorized access or use of any of the features and functionality of any Goods, including access by viruses, worms, or any other harmful code or material. The Buyer will immediately notify the Company if the Buyer knows of or suspects any breach of security or potential vulnerability of any Goods that may damage, interfere with, or otherwise impact any of the Goods or any information, content, or material accessible via any of the Goods. The Buyer will promptly remedy such breach or potential vulnerability
- 8.9. If any of the Services require the Buyer to open an account, the Buyer must complete the registration process by providing the Company with current, complete and accurate information as required by the applicable registration form. The Buyer may also be required to choose a password and a user name. Access to and use of password protected or secure areas of the Services are restricted to authorized users only. The Buyer agrees not to share their password(s), account information, or access to the Services with any other person. The Buyer is responsible for maintaining the confidentiality of password(s) and account information, and is responsible for all activities that occur through the use of their password(s) or account(s) or as a result of their access to the Services. The Buyer agrees to notify the Company immediately of any use of their password(s) or account(s) that they did not authorize or that is not authorized by these Terms and Conditions
- 9. User Generated Content**
- 9.1. The Services may allow the Buyer or its users to communicate, submit, upload or otherwise make available text, images, audio, video, competition entries or other content ("User Generated Content"), which may be accessible and viewable by the public. Access to these features may be subject to age restrictions
- 9.2. The Buyer may not submit or upload User Generated Content that is defamatory, harassing, threatening, bigoted, hateful, violent, vulgar, obscene, pornographic, or otherwise offensive or that harms or can reasonably be expected to harm any person or entity, whether or not such material is protected by law
- 9.3. The Company does not claim ownership to the User Generated Content; however, the Buyer grants the Company a non-exclusive, sub-licensable, irrevocable and royalty-free worldwide license under all copyrights, trademarks, patents, trade secrets, privacy and publicity rights and other intellectual property rights to use, reproduce, transmit, print, publish, publicly display, exhibit, distribute, redistribute, copy, index, comment on, modify, adapt, translate, create derivative works based upon, publicly perform, make available and otherwise exploit such User Generated Content, in whole or in part, in all media formats and channels now known or hereafter devised, in any number of copies and without limit as to time, manner and frequency of use, without further notice to the Buyer, with or without attribution, and without the requirement of permission from or payment to the Buyer or any other person or entity
- 9.4. The Buyer represents and warrants that the User Generated Content conforms to these Terms and that the Buyer owns or has the necessary rights and permissions, without the need for payment to any other person or entity, to use and exploit, and to authorize to use and exploit, the User Generated Content in all manners contemplated by these terms. The Buyer agrees to indemnify and hold the Company and its subsidiary and affiliated Company's, and each of their respective employees and officers, harmless from any demands, loss, liability, claims or expenses (including attorneys' fees), made against the Company by any third party arising out of or in connection with the Company use and exploitation of the User Generated Content. The Buyer also agrees not to enforce any moral rights, ancillary rights or similar rights in or to the User Generated Content against the Company or its licensees, distributors, agents, representatives and other authorized users, and agrees to procure the same agreement not to enforce from others who may possess such rights
- 9.5. The Company has the right but not the obligation to monitor, screen, post, remove, modify, store and review User Generated Content or communications sent through the Services, at any time and for any reason, including to ensure that the User Generated Content or communication conforms to these terms, without prior notice to the Buyer. The Company is not responsible for, and does not endorse or guarantee, the opinions, views, advice or recommendations posted or sent by the Buyer or its users
- 10. Confidentiality**
- 10.1. The Company and the Buyer (as to information disclosed, the "Disclosing Party") may each provide the other party (as to information received, the "Receiving Party") with Confidential Information in connection with this Contract. "Confidential Information" means (a) information that is designated in writing as "confidential" or "proprietary" by Disclosing Party at the time of written disclosure, and (b) information that is orally designated as "confidential" or "proprietary" by Disclosing Party at the time of oral or visual disclosure and is confirmed to be "confidential" or "proprietary" in writing within 20 days after the oral or visual disclosure. In addition, prices for Products and Services shall be considered the Company's Confidential Information
- 10.2. Receiving Party agrees: (i) to use the Confidential Information only in connection with the Contract and use of Goods, (ii) to take reasonable measures to prevent disclosure of the Confidential Information to third parties, and (iii) not to disclose the Confidential Information to a competitor of Disclosing Party. Notwithstanding these restrictions, (a) the Company may disclose Confidential Information to its affiliates and subcontractors in connection with performance of the Contract, (b) a Receiving Party may disclose Confidential Information to its auditors, (c) Buyer may disclose Confidential Information to lenders as necessary for Buyer to secure or retain financing needed to perform its obligations under the Contract, and (d) a Receiving Party may disclose Confidential Information to any other third party with the prior written permission of Disclosing Party, and in each case, only so long as the Receiving Party obtains a non-disclosure commitment from any such subcontractors, auditors, lenders or other permitted third party that prohibits disclosure of the Confidential Information and provided further that the Receiving Party remains responsible for any unauthorized use or disclosure of the Confidential Information. Receiving Party shall upon request return to Disclosing Party or destroy all copies of Confidential Information except to the extent that a specific provision of the Contract entitles Receiving Party to retain an item of Confidential Information. The Company may also retain one archive copy of Buyer's Confidential Information
- 10.3. The obligations under this Confidentiality Article shall not apply to any portion of the Confidential Information that: (i) is or becomes generally available to the public other than as a result of disclosure by Receiving Party, its representatives or its affiliates; (ii) is or becomes available to Receiving Party on a non-confidential basis from a source other than Disclosing Party when the source is not, to the best of Receiving Party's knowledge, subject to a confidentiality obligation to Disclosing Party; (iii) is independently developed by Receiving Party, its representatives or affiliates, without reference to the Confidential Information; (iv) is required to be disclosed by law or valid legal process provided that the Receiving Party intending to make disclosure in response to such requirements or process shall promptly notify the Disclosing Party in advance of such disclosure and reasonably cooperate in attempts to maintain the confidentiality of the Confidential Information
- 10.4. Neither Buyer nor the Company shall make any public announcement about the Contract without prior written approval of the other party. As to any individual item of Confidential Information, the restrictions under this Confidentiality Article shall expire 10 years after the date of disclosure. Confidentiality Article does not supersede any separate confidentiality or nondisclosure agreement signed by the parties
- 11. Risk and property**
- 11.1. Risk of damage to or loss of the Goods shall pass to Buyer:
- 11.1.1. in the case of Goods to be delivered at the Company's premises, at the time when the Company notifies the Buyer that the Goods are available for collection; or
- 11.1.2. in the case of Goods to be delivered elsewhere at the time of delivery or, if the Buyer wrongfully fails to take delivery of the goods, the time when the Company has tendered delivery of the Goods
- 11.2. Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, property in the Products shall not pass to the Buyer until the Company has received payment in full including all interest and other costs due to it
- 11.3. Until property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Company's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Company's property. The Company shall be entitled at any time to require the Buyer to deliver up the Goods to the Company and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods. The Company shall be entitled where the Goods have been fixed or attached to any other product to detach the Goods in order to recover possession of them. Such redelivery or retaking of possession shall be without prejudice to any other rights of the Company. All costs and expenses incurred by the Company as a result of taking action in accordance with, together with transportation and storage charges, must be paid by Buyer to the Company on demand
- 11.4. The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company, but if the Buyer does so all monies owing by the Buyer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable
- 11.5. Buyer waives its rights to receive a copy of any verification statements under the PPSA and agrees that as between the Company and Buyer:
- 11.5.1. Buyer will have no rights under (or by reference to) sections 114(1), 116, 120(2), 121, 125, 129, 131, 133 and 134 of the PPSA; and
- 11.5.2. where the Company has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply
- 11.6. Buyer undertakes to:
- 11.6.1. promptly do all things, execute all documents and/or provide any information which the Company may reasonably require to enable the Company to perfect and maintain the perfection of its security interest (including by registration of a financing statement);
- 11.6.2. give the Company not less than 14 days' prior written notice of any proposed change in its name and/or any other change to its details; and
- 11.6.3. immediately on request by the Company (and at Buyer's expense) obtain from any third party such agreements and waivers of any security interest that third party has in the Goods, to ensure that at all times the Company has a first priority security interest in the Goods
- 11.7. When property in the Goods passes to the Buyer, risk of damage to, or loss or deterioration of, the Goods from any cause whatsoever passes to Buyer

12. Warranties and liability

- 12.1. Subject to the conditions set out below the Company warrants that the Products will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 3 months from the date of their initial use or, in the case of new goods, for the period of the manufacturer's warranty whichever is the greater
- 12.2. The above warranty is given by the Company subject to the following conditions:
- 12.2.1. the Company shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;
- 12.2.2. the Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Company's approval;
- 12.2.3. the Company shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;
- 12.2.4. the above warranty does not extend to Goods, parts, materials or equipment not manufactured by the Company, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company
- 12.3. Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law
- 12.4. Where the Goods are sold under a consumer transaction (as defined by the Sale of Goods Act 1979) the statutory rights of the Buyer are not affected by these Conditions
- 12.5. Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Company within 3 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Company accordingly, the Buyer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract
- 12.6. Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Company in accordance with these Conditions, the Company shall be entitled to replace the Goods (or the part in question) free of charge or, at the Company's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but the Company shall have no further liability to the Buyer
- 12.7. The Services are provided "as is" and "as available." The Company disclaims all conditions, representations and warranties of any kind, whether express or implied, oral or written, including but not limited to, the implied warranties of merchantability, title, fitness for any particular purpose, non-infringement and all warranties arising from any course of dealing, course of performance or usage of trade. The Company makes no warranty that: (i) the Services will meet the Buyer requirements or be uninterrupted or error-free; (ii) regarding the reliability, timeliness or performance of the Services; or (iii) that any errors in the Services can or will be corrected
- 12.8. Any content accessed, downloaded or otherwise obtained on or through the use of the Service is used at the Buyer and its user's discretion and risk. The Company shall have no responsibility for any damage to the Buyer and its user's computer system or loss of data that results from the download or use of content
- 12.9. Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Buyer or any third party by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, incidental, special or consequential loss or damage (whether for loss of profit, revenue, data or data use, property damage or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, even if the Company was advised of the possibility of such damages, nor shall the Company be held liable for delay or failure in performance resulting from causes beyond the Company reasonable control. In no event shall the Company total liability to the Buyer for all damages, losses and causes of action exceed one thousand NZ dollars
- 12.10. Any advice, recommendation, information, assistance or service provided by the Company in relation to Goods and their use or application is given in good faith but is provided without liability or responsibility on the part of the Company and without intention that Buyer should rely thereon
- 12.11. Buyer releases and indemnifies the Company, its related bodies corporate, and their respective officers, employees, consultants and agents from and against all actions, claims, proceedings and demands (including those brought by third parties) which may be brought against it or them, whether on their own or jointly with those indemnified, and whether at common law, in equity or pursuant to statute or otherwise, in respect of any loss, death, injury, illness or damage (whether personal or property, and whether direct or consequential, including consequential financial loss) arising out of a breach of Buyer's warranties or obligations contained in these Terms, and from and against all damages, reasonable costs and expenses incurred in satisfying, defending or settling any such claim, proceeding or demand

13. Force majeure

- 13.1. The Company shall be entitled without liability on its part and without prejudice to its other rights, to terminate the Contract or any unfulfilled part thereof, or at its option to suspend or make partial deliveries or extend the time or times for delivery, if the manufacture of the Goods by the Company or the Company's suppliers, or the delivery of the Goods or the performance by the Company of any of its obligations under the Contract is hindered or delayed whether directly or indirectly by reason of the Buyer failing to furnish necessary instructions or information, or by war or other hostilities, civil commotion, act of God, government action or legislation, interruption of transport, strike, lockout or other form of industrial action, accidents or stoppages to works, shortage of labour materials equipment fuel or power, breakdown of machinery or any their cause whatsoever beyond the reasonable control of the Company or its sub-contractors, whether or not such cause exists at the date of the order

14. Insolvency of buyer

- 14.1. If:
- 14.1.1. the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- 14.1.2. an encumbrance takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
- 14.1.3. the Buyer ceases, or threatens to cease, to carry on business; or
- 14.1.4. the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly then without prejudice to any other right or remedy available to the Company, it shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary
- 14.1.5. if Buyer is unable to pay its debts as they fall due or otherwise takes any corporate action or any steps are taken or legal proceedings are started for: (a) its winding-up, dissolution, liquidation, or re-organisation, other than to reconstruct or amalgamate while solvent on terms approved by Company; (b) the appointment of a controller, receiver, administrator, official manager, trustee or similar officer of it or of any of its revenues and assets; or (c) seeks protection or is granted protection from its creditors, under any applicable legislation

15. Termination

- 15.1. Either party may terminate the Contract forthwith, by notice, if a party has breached any of the Terms and Conditions of the Contract and fails to remedy the breach to the satisfaction of the other party, acting reasonably, within 30 days of receipt of notice in writing from the other party requiring the breach to be remedied
- 15.2. Termination of the Contract shall be without prejudice to the rights and obligations of the parties prior to termination. Termination shall also be without prejudice to any of the provisions of the Contract and the Terms and Conditions which are expressed to survive termination
- 15.3. Upon any termination of the Contract, Buyer must discontinue accessing and using the Goods and delete all Services. All obligations or liabilities that accrued prior to the effective date of termination and all remedies for breach of the Contract shall survive; and all other rights, obligations, and licenses of the parties under the Contract shall terminate
- 15.4. If the Contract is terminated, then: the Company will provide the Buyer access to, and the ability to export, the User Generated Content for a commercially reasonable period of time at Company's then-current rates for the applicable Services; after a commercially reasonable period of time, the Company will delete User Generated Content by removing pointers to it on the Company's active and replication servers and overwriting it over time; and upon request each party will promptly use commercially reasonable efforts to return or destroy all other Confidential Information of the other party

16. General

- 16.1. Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice
- 16.2. No waiver by the Company of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision
- 16.3. If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby
- 16.4. The Contract shall be governed by and construed in accordance with the laws of New Zealand and each party agrees to submit to the exclusive jurisdiction of the courts of New Zealand in relation to any dispute or claim arising out of or in connection with the Contract or its subject matter or information (including non-contractual disputes or claims)
- 16.5. Any notice in connection with these Terms or any Contract will be deemed to have been duly given when made in writing and delivered or sent by email or post to the party to whom such notice is intended to be given, at the postal or email address of that party in the Contract or to such other address as may from time to time be notified in writing to the other party