

TERMS OF TRADE

CONTENTS

1.	PART A: Overview of these Terms	1
2.	PART B: Products and Services	1
3.	PART C: Price	1
4.	PART D: Payment Terms.....	1
5.	PART E: Compliance and Information.....	2
6.	PART F: Dispute Resolution and Liability	2
7.	PART G: General.....	3
8.	PART H: Dictionary.....	3
9.	PART I: Specific Terms.....	4

PART A: OVERVIEW OF THESE TERMS

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

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

To make these Terms easy to use, we:

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

1. Introduction

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

PART B: PRODUCTS AND SERVICES

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

2. Order process

- You may order Products and Services from us in accordance with our order processes that we advise to you at any time.
- All Orders are subject to acceptance by us. We may accept an Order (in whole or in part) by issuing an invoice for the applicable Products and Services, delivering the Products and Services or otherwise confirming the order in writing.
- We are under no obligation to enquire as to the authority of any person placing an Order on your behalf.
- You may request Variations to Orders. However, acceptance is at our discretion and is subject to our approval in writing, and in accordance with clause 7.

3. Delivery of Products and Supply of Services

- We will use reasonable efforts to deliver Products and provide Services on the Delivery Date specified in the relevant Order. However, unless expressly agreed otherwise, the Delivery Date is indicative only.
- You may collect the Products at our premises, or we will deliver the Products and provide the Services at the delivery location set out in the relevant Order or any other location agreed with you in writing.
- If you request that we leave the Products outside our premises for collection or to deliver the Products to an unattended location, then the Products shall be left at your sole risk. In the event that the Products are lost, damaged or destroyed then replacement of the Products shall be at your expense.
- Subject to clause 16, if the delivery location is at your premises, you must provide our Representatives with suitable access to your premises during normal business hours, together with any assistance reasonably required by our Representatives to deliver the Products and perform the Services.

4. Supply of Products

- Clauses 4 and 5 applies if your Order relates to Products.
- We may deliver Orders in instalments (unless agreed otherwise).
- If you delay, fail or refuse to accept delivery of Products, the Products will be treated as delivered when we were willing and able to deliver the Products. Without affecting any other rights we may have, we may charge you for any reasonable expenses or additional costs incurred by us as a result of the delay, failure or refusal to accept delivery (including storage).
- Risk in the Products passes to you on delivery.

- You are responsible for ensuring that any instructions, recommended uses, applications and installation methods are followed for Products and any cautions and/or warnings are observed.

5. Defects

- You must inspect the Products on the date of delivery and notify us of any alleged defect or damage or incorrect products or quantity (**Defects**). Upon request, you must allow us to inspect, or return to us, any defective or damaged Products. You should notify us of any alleged Defects as soon as possible to enable us to confirm that any Defects occurred before delivery to you.

- If there are any Defects in an order, the remedies set out in clause 24.1 will apply.

6. Cancellation

- Either party may cancel an Order by written notice if the other party:
 - commits a material breach of these Terms which is not remedied within 20 Business Days of written notice of the breach from the other party; or
 - suffers an Insolvency Event.

- If we are unable to deliver any Products or Services to you, due to reasons beyond our reasonable control, we may cancel the Order (in whole or in respect of any instalment) by giving written notice to you. We will repay you any amount you have paid to us in advance for the relevant Products and/or Services. We will not be liable for any loss or damage arising from such cancellation.

- We will not accept cancellation of any Order for Products made to your specifications, or for non-stocklist items after the Order has been accepted by us.

7. Variations

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

- If you do not respond to a Variation Notice within 10 Business Days, we may assume that you have accepted the applicable variations.

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

PART C: PRICE

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

8. Price

- The Price for Products and Services will be:
 - calculated in accordance with our current price list as at the date you submit the relevant Order;
 - calculated based on our standard hourly rate as at the date of the Services that are provided;
 - the Price that we have quoted for the Products and Services (subject to clause 8.5).
- We may update our price list and standard hourly rates at any time on notice to you in advance. Any such updates will only apply to Orders placed after the effective date of the update.
- Unless otherwise stated, the Price does not include GST.
- We may charge you for freight, insurance, installation, disbursements and any applicable taxes, duties and levies, in addition to the Price.
- Where we provide a quotation, proposal or estimate:
 - unless otherwise specified, the quotation, proposal or estimate is valid for 30 days from the date of issue and may be subject to such further conditions as are expressly set out in the quote, estimate or pricing;
 - we may withdraw the quotation, proposal or estimate at any time before you accept it or we accept an Order by notice in writing to you; and
 - the quotation, proposal or estimate will be exclusive of any applicable additional amounts referred to in clause 8.4.

PART D: PAYMENT TERMS

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

9. Payment

- You must pay us all Amounts Owing to our bank account (notified to you and updated at any time) or any other payment method that we agree with you.
- Payment shall be:
 - on delivery of the Products; or
 - on completion of the Services; or
 - by way of instalments/progress payments in accordance with the Order; or
 - as indicated on our invoice; or
 - 20th of the month following; or
 - no later than 7 days from the date of the invoice (unless otherwise stated on the invoice), and
 - in full without deduction, withholding, set-off or counterclaim.
- If you have any dispute relating to an invoice issued by us, you:
 - must notify us of that dispute in writing within 7 days from the date of invoice (after that period, unless there is a manifest error, you will be deemed to have accepted the invoice); and

- (b) will only withhold payment of the amount in dispute and will, upon resolution of any dispute, immediately pay the balance (if any) due to us.
- 9.4 We and you each agree to promptly deal with any disputed invoices and, where possible, to resolve disputes before the due date for payment.
- 10. Credit terms and repayment obligations**
- 10.1 The supply of Products and Services to you on credit is subject to our prior approval. We may use the services of credit reporters and debt collection agencies (in accordance with clause 17.2).
- 10.2 You must notify us immediately:
- if you suffer an Insolvency Event. Any Amount Owing will, whether or not due for payment, immediately become due and payable if an Insolvency Event occurs; or
 - if you are a company and there is a material change in your effective management or ownership.
- 11. Deposit and guarantee**
- 11.1 We may require that you pay us in advance, or pay a deposit, or provide a guarantee or other security, before we supply Products or Services, as security for any Amount Owing.
- 11.2 If we cancel an Order (for any reason other than your breach of these Terms), we will refund any deposit that you have paid to us in full. Otherwise, any deposit that you pay to us is non-refundable, unless we expressly agree otherwise in writing.
- 12. Rights to recover Products**
- 12.1 We retain ownership of all Products that we supply to you until we have received payment in full of the Amount Owing.
- 12.2 You may resell or use any Products in the ordinary course of your business before ownership of the Products has passed to you. However, you will be deemed to hold the proceeds of sale or use (in whatever form) on trust for us to the extent of the Amount Owing.
- 12.3 If any Amount Owing is overdue or if an Insolvency Event occurs, you must return Products to us on request, or permit us to enter any premises where Products may be stored to repossess those Products.
- 13. Late payments**
- 13.1 If payment in full of any Amount Owing (which is not subject to a genuine dispute) is not made to us on the due date, we may:
- suspend, or cancel (in accordance with clause 6.1(a)), the provision of any or all Products and Services to you;
 - cancel any rebates or discounts (whether or not previously credited); and
 - charge you interest at a rate of 2.5% per month on the balance of the outstanding amount from the due date of payment until the date the outstanding amount is paid, accruing daily and charged monthly.
- 14. Costs of recovering Amounts Owing**
- 14.1 You must reimburse us for any reasonable costs and expenses we incur to recover any Amount Owing, or exercise our rights to recover Products, including any debt collection fees or commission and full legal expenses.
- 15. Security interests**
- 15.1 You acknowledge that these Terms create, in our favour, a security interest (as defined in the PPSA) in all Products and the proceeds of any Products (in accordance with clause 12.1) (**Security Interest**), to secure the payment by you to us of the Amount Owing.
- 15.2 You undertake to promptly sign any further documents which we may reasonably require to enable us to perfect and maintain the perfection of the Security Interest (including by registration of a financing statement) and to provide not less than 14 days' prior written notice of any proposed change in your name and/or any other change in details (including changes in address, trading name or business practice).
- 15.3 The parties agree to contract out of sections 114(1) (a), 133 and 134 of the PPSA. You agree to waive your rights under the PPSA to the extent permitted by section 107(2) of the PPSA and to receive a verification statement relating to the Security Interest. Where we have rights in addition to Part 9 of the PPSA, those rights will continue to apply.
- 15.4 We reserve the right to require a guarantee, or any other additional security (at your cost), as security for payment, before we provide Products or Services to you.

PART E: COMPLIANCE AND INFORMATION

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

- 16. Health and safety**
- 16.1 Each party will comply with the Health and Safety at Work Act 2015 (**HSW Act**), including all applicable regulations under the HSW Act, as well as all applicable standards and codes of practice relating to health and safety. In addition, each party will comply with the other party's pre-notified and reasonable health and safety policies when on the party's premises.
- 16.2 You must notify us of any known hazards arising from your premises to which any of our Representatives may be exposed while on the premises and ensure that your workplace is without risks to the health and safety of any person.
- 16.3 Each party must consult, co-operate with and co-ordinate activities with all other persons who have a health and safety duty in relation to the same matter in providing the Products and/or Services (including in connection with the delivery of the Products and/or Services).
- 17. Privacy**
- 17.1 We may collect, use and share Personal Information:
- for the purposes of the performance of our obligations or exercise of our rights under these Terms; and
 - in accordance with the Privacy Act 2020.
- This may include sharing Personal Information with our Related Companies.
- 17.2 We may use the services of credit reporters and debt collection agencies. We may provide your Personal Information to those agencies in order to use their services. Information disclosed to credit reporters (including default information) will be held by them and used to provide credit reporting services.
- 17.3 If you provide us with any information about a third party (including a Representative), or authorise us to collect that information, you confirm that you are authorised by the individual concerned to provide their Personal Information to us or authorise the collection of information about them in accordance with this clause 17. You also confirm that you have informed the individual of their rights to access and request correction of Personal Information.
- 17.4 You (if you are an individual) and your Representatives have the right to access, and request correction of, any of your Personal Information held by us.

- 18. Confidentiality**
- 18.1 Each party must keep confidential all Confidential Information.
- 18.2 Nothing in clause 18.1 prevents a party from disclosing Confidential Information if disclosure is:
- required by law or a Regulator (but only to the extent required or, if applicable, requested by a Regulator);
 - is reasonably required to enable a party to perform its obligations or exercise its rights under these Terms; or
 - to a Related Company or Representatives on a 'need to know' basis, provided that person is under a duty to keep the Confidential Information confidential in accordance with these Terms.
- 18.3 We may refer to you as a customer (including by using your logo) and publish any testimonials or references that you provide to us, on our website and associated marketing materials. We will ensure that any such references or testimonials accurately represent your experience with our Products and Services. Please contact us if you do not approve us referring to you in accordance with this clause or have any comments on published content.
- 19. Insights and Intellectual property**
- 19.1 We may also use any information that we collect in connection with the Products and Services to improve our Products and Services, for statistical and research purposes, and for general information purposes including to provide industry and market insights (together, **Insights**), provided that:
- we must ensure that our obligations of confidentiality and privacy are paramount – for example, we will ensure that any information that we disclose or publish in accordance with this clause 19.1 is in a fully aggregated and de-identified form (so that it does not identify you or any individuals); and
 - we will not use information that we collect in connection with the provision of Products and Services to you, in accordance with this clause 19.1, if you have informed us that you do not authorise us to do so.
- 19.2 To the extent required by law, you grant us a non-exclusive, perpetual, irrevocable, royalty-free licence to use and sub-licence information we collect in connection with the provision of Products and Services to you, in accordance with clause 19.1. However, for clarity, we own the intellectual property rights in all Insights.
- 19.3 We (or our licensors) own all rights, title and interest in the intellectual property rights in the Products and Services at all times.
- 19.4 Any new intellectual property which is created by us or on our behalf, including as a result of, or in connection with, the provision of our Products and Services, will be owned by us, unless otherwise agreed in writing.
- 19.5 You assign all intellectual property rights to us with effect from creation, to the extent required to give effect to clause 19.3 and 19.4, and agree to do all things reasonably required by us to give effect to such assignment.
- 19.6 You warrant that the use by us of any designs, instructions or specifications supplied to us by you will not infringe the intellectual property rights of any other person and indemnify us against any losses, damages, liabilities or costs (including full legal costs) that we may suffer or incur in the event of any such infringement.

PART F: DISPUTE RESOLUTION AND LIABILITY

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

- 20. Dispute Resolution**
- 20.1 If a dispute arises out of or in connection with these Terms, either party may give a notice to the other setting out the details of the dispute (**Dispute Notice**).
- 20.2 Following receipt of a Dispute Notice:
- a Representative of each of us (with authority to settle the dispute) will meet, within 10 Business Days, to try to resolve the dispute;
 - if the dispute is not resolved within 10 Business Days of our Representatives meeting (or if the meeting does not take place, for any reason, within 10 Business Days of the date of a Dispute Notice), the dispute will be referred to the senior manager of each party (if applicable), who will try to resolve the dispute within a further 10 Business Days; and
 - if the dispute is not resolved by our respective Representatives in accordance with clause 20.2(b), then either party may commence court proceedings.
- 20.3 This clause 20 does not restrict either party from applying to a court for interim measures or any other form of urgent relief at any time. However, neither party may commence any other form of court proceeding without first following the procedure set out in this clause 20.
- 20.4 Each party must continue to perform its obligations in these Terms, despite the existence of a dispute, subject to the termination rights set out in these Terms.
- 21. Consumer Guarantees Act**
- 21.1 If you are acquiring, or hold yourself out as acquiring, any Products or Services in trade, to the extent permitted by law, you agree that the parties are contracting out of the CGA (to the extent that the CGA would otherwise apply) and that the CGA does not apply to any matters covered by these Terms.
- 21.2 If you are acquiring any Products for the purpose of resupply in trade, you undertake that you will:
- contract out of the CGA to the maximum extent permitted by law in your contracts with your own customers; and
 - procure that your customers, and each other person in the distribution chain thereafter, contract out of the CGA to the maximum extent permitted by law in their contracts with customers.
- You will indemnify us against any liability or cost incurred by us as a result of your breach of this clause 21.2.
- 22. Warranties**
- 22.1 We warrant that all Products and Services are free from material defects in materials and workmanship. However, this warranty will not cover any defect or damage to the extent that it is caused by:
- any fault or defect in our Products or Services resulting from any of your (or your Representatives) acts or omissions (outside of the ordinary use of the Products or Services); or
 - minor deviations in specification, measurements, colour, weight, size or strength of the Products.
- 22.2 You acknowledge that, except for the warranty set out in clause 22.1 and any written materials that we provide to you:
- we do not provide any other express warranties relating to the Products and Services; and

- (b) we expressly exclude any other Product and and/or Service warranties, including any warranties relating to the suitability for resale, quality or fitness for any particular purpose, of our Products or Services. However, this clause 22.2 is subject to any rights that you may have under the CGA (in accordance with clause 21).
- 23. Third party suppliers**
 23.1 If you request and authorise us to arrange the provision of Products or Services directly to you by a third party supplier (whether or not such arrangement involves us contracting as your agent), to the extent applicable, these Terms will apply to our Services in arranging such supply, provided that to the extent permitted by law we exclude all liability in connection with the supply of Products and Services to you directly by a third party supplier. You agree to pay any commission or other payments due to us in accordance with these Terms.
- 24. Limitation of liability**
 24.1 To the extent permitted by law, subject to clause 24.3, our total liability under or in connection with these Terms and the Products and Services is limited to, at our option:
 (a) in the case of Products, any one or more of the following:
 (i) the replacement of the Products or the supply of equivalent products;
 (ii) the repair of the Products;
 (iii) the payment of the cost of replacing the Products or of acquiring equivalent products; or
 (iv) the payment of the cost of having the Products repaired; or
 (b) in the case of Services:
 (i) supplying the Services again; or
 (ii) the payment of the cost of having the Services supplied again.
- 24.2 Subject to clause 24.3, if we have any liability under or in connection with these Terms, to the maximum extent permitted by law:
 (a) our total aggregate liability to you for any loss, damage or liability arising out of or in connection with these Terms will be limited to the Price paid by you to us for the applicable Products and/or Services; and
 (b) we will not be liable for any:
 (i) indirect, special or consequential loss or damage whatsoever; or
 (ii) loss of profits, revenue, data, goodwill, customers or opportunity or loss of or damage to reputation.
- 24.3 Nothing in these Terms (including clauses 24.1 and 24.2) will limit or exclude our liability for:
 (a) any fraudulent act or omission;
 (b) a breach of clause 18 (Confidentiality);
 (c) our wilful breach of these Terms;
 (d) our gross negligence; and/or
 (e) any matter to the extent that liability cannot be excluded or limited by law.
- 24.4 The limitations and exclusions on liability in this clause 24 will apply irrespective of whether the legal basis for the applicable claim contract, equity or tort (including negligence) is. However, this clause 24 does not limit or exclude any rights that you may have under statute.
- 24.5 In no circumstances will we have any liability whatsoever under or in connection with these Terms:
 (a) for the acts or omissions of your Representatives or any third party;
 (b) for any acts or omissions of performance in accordance with your instructions (or instructions from your Representatives); or
 (c) to any third party.

PART G: GENERAL

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

- 25. General**
 25.1 **Governing Law:** These Terms are governed by and to be construed in accordance with the laws of New Zealand and each party submits to the exclusive jurisdiction of the courts of Hamilton, New Zealand.
- 25.2 **Previous Agreements:** These Terms supersede and replace any previous written agreements between the parties relating to the Products and Services.
- 25.3 **Sub-contracting:** We may subcontract the performance of our obligations (including to a Related Company), on the basis we remain solely liable to you for the performance of our obligations.
- 25.4 **Assignment:** You must not assign, novate or transfer your rights or obligations under these Terms without our prior written consent (which may be withheld in our sole discretion). We may assign these Terms to any other person on notice to you (provided that we will request your prior approval (not to be unreasonably withheld or delayed) if the assignment could have any material adverse effect on you). Without limiting the foregoing, we may assign to any other person all or part of the Amount Owing by you to us.
- 25.5 **Amendments:** Any amendment to these Terms must be in writing signed by each party, except where stated otherwise in these Terms or where we are required to make changes to ensure compliance with applicable laws (in which case we notify you of the changes in writing).
- 25.6 **Force majeure:** We will not be liable to you for any failure or delay in performing our obligations under these Terms where such failure or delay is caused by events or circumstances beyond our reasonable control, including any strike, lockout, labour dispute, delay in transit, embargo, epidemic, pandemic, accident, emergency, order of government or other authority or act of God.
- 25.7 **Waiver:** A single or partial exercise or waiver of a right relating to these Terms does not prevent any other exercise of that right or the exercise of any other right.
- 25.8 **Survival:** Any provision of these Terms, which is by its nature a continuing obligation, will survive termination.
- 25.9 **Rights of Third Parties:** These Terms are not intended to confer a benefit on any person other than the parties to these Terms.
- 25.10 **Relationship:** We will provide Products and Services to you as an independent supplier. Nothing in these Terms creates a relationship of employment, trust, agency, joint venture, partnership or any other fiduciary relationship between the parties.
- 25.11 **Non-exclusive:** These Terms are not exclusive and do not impose any restriction on us providing Products and Services to, or you purchasing any product or services from, any other person.
- 25.12 **Counterparts:** These Terms may be executed in any number of counterparts (including by electronic signature or by email exchange of .pdf copies) which together will constitute the one instrument.

PART H: DICTIONARY

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

- 26. Definitions**
Amount Owing means any amount owed by you to us, from time to time, including the Price, any applicable amounts referred to in clause 8.4, any interest payable by you, your liability under these Terms and any enforcement costs incurred by us in seeking payment of any Amounts Owing by you.
- Business Day** means Monday to Friday, excluding public holidays in New Zealand.
- Confidential Information** means all information that could be reasonably regarded in the circumstances as confidential, including information which relates to the business, interests or affairs of a party, the terms of use, the Products and Services (as applicable), and intellectual property rights, but excludes information which is:
 (a) in the public domain, other than as a result of a breach of these Terms;
 (b) in the possession of a party prior to the commencement of these Terms without any obligation of confidentiality; and
 (c) is independently developed or acquired by a party prior to the commencement of these Terms without relying on information which would itself be Confidential Information.
- Consumer** has the meaning given to that term in the Consumer Guarantees Act 1993.
- Delivery Date** means the date for delivery of the Products and/or Services, as specified in the Order.
- Insolvency Event** means, in relation to you, any of the following steps has occurred (or we have reasonable grounds to believe that any of these steps is likely to occur):
 (a) the primary, or all, of your business activities is suspended or ceases
 (b) the presentation of an application for your liquidation;
 (c) the making of any compromise, proposal or deed of arrangement with all or some of your creditors;
 (d) the appointment of a liquidator, receiver, statutory manager, or similar official;
 (e) your suspension or threatened suspension of the payment of your debts as they fall due;
 (f) the enforcement of any security against the whole or a substantial part of your assets;
 (g) if you are an individual, anything having a similar effect to any of the events specified above happens in relation to you; or
 (h) any other insolvency event or proceedings analogous to any of the foregoing occurs in any relevant jurisdiction,
 in each case, unless it takes place as part of a solvent reconstruction, amalgamation, merger or consolidation.
- Order** means an order for Products or Services that you submit to us and we approve, in accordance with clause 2.
- Personal Information** has the meaning given to that term in the Privacy Act 2020.
- PPSA** means the Personal Property Securities Act 1999.
- Price** means the Price payable, in accordance with clause 8.1.
- Products** means any Products (and associated services) supplied by us to you at any time, including the Products specified in an Order.
- Prohibited Content** means any content on a Website that:
 (a) is, or could reasonably be considered to be, in breach of the broadcasting standards 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.
- Regulator** means any authority, commission, government department, court, tribunal, or similar having regulatory or supervisory authority over the parties or any of the Products and/or Services.
- Related Company** has the meaning given to it in the Companies Act 1993, read as if a reference to company was a reference to any body corporate of any jurisdiction.
- Representatives** means directors, officers, employees, agents and contractors of the relevant party.
- Services** means any services supplied by us to you at any time, including the Services specified in an Order.
- 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, VOIP, Office 365, Facebook, Twitter, LinkedIn, Pinterest, etc.).
- Software** means any of our branded Software and includes any Software required for operating each individual terminal or application, or any coding that any web-based service is comprised of (and where the context so permits shall include any supply of Products and/or Services as hereinafter defined).
- Specific Terms** means the terms (if any) that are included in Part I to these Terms.
- Support** means to provide direct support to you for technical issues. Support includes the following Services:
 (d) remote access resolution;
 (e) any time spent to resolve any issues with your computer system created by any operator error on the part of your or any action of any third parties whether authorised or unauthorised by you;
 (f) resolving any issues which are solely caused by the actions of third parties and originate outside of your computer system e.g. problems that relate to the supply of services by your internet service provider.
- Terms** means these Terms of Trade (including any Specific Terms outlined in Part I), as may be amended from time to time, each Order and any additional terms expressly agreed in accordance with clause 1.2 (if applicable).
- We or us** means the Supplier of Products and Services, SPINCO Technology Limited.
- Website** means a location which is accessible on the Internet through the World Wide Web and which provides multimedia content via a graphical User Interface.
- You or your** means the customer purchasing Products and Services from us.
- Interpretation**
 In these Terms, unless the context otherwise requires:
 (a) headings are for convenience only and do not affect interpretation;
 (b) a reference to legislation includes all regulations, orders, instruments,

codes, guidelines or determinations issued under that legislation or and any modification, consolidation, amendment, re-enactment, replacement or codification of it;

- (c) a reference to "in writing" includes by email and a reference to "agree" or "agreement" or "notice" or "approval" means an agreement, notice or approval (as applicable) in writing;
- (d) the words "include" or "including", or similar expressions, are to be construed without limitation;
- (e) a reference to a party to includes that party's successors and permitted assigns and substitutes; and
- (f) a word importing the singular includes the plural and vice versa.

PART I: SPECIFIC TERMS

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

28. Your acknowledgements

- 28.1 We reserve the right to levy a minimum charge of 1 hour inspection fee based on our hourly labour rate. If upon inspection any goods provided by you are deemed to be uneconomical to repair then we will either return the goods to you and/or dispose of upon written instructions. You accept and acknowledge that at all times you will remain liable for the initial inspection fee.
- 28.2 You acknowledge that any advice or recommendations by us are provided on the basis of our industry knowledge and experience only and shall not be deemed as specialist advice.
- 28.3 All Flash, PHP, JavaScript, HTML and Dynamic HTML coding and other supplied code (if any) remains the intellectual property of ours. Copying or disseminating the code for any purpose whatsoever is strictly forbidden and will be a breach of copyright.
- 28.4 Notwithstanding anything herein, the intellectual property rights in our Products and our routines do not vest in you and there is no assignment of the intellectual property rights in our Products or our routines to you. We may grant you a license to use the intellectual property in relation solely to the operation of your business, however, you 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 us unless express approval is given in advance by us. Such license shall terminate on default of payment or any other terms of this contract by you.

29. Your responsibilities

- 29.1 It shall be your responsibility to remove any removable media (including, but not limited to, diskettes, CDs, DVDs or PC Cards) from the Products prior to returning or submitting the Products for repair or replacement.
- 29.2 We shall not be held liable for any loss or corruption of data or files (including, but not limited to, software programmes) resulting from servicing or repairs being undertaken on the Products. It is the sole responsibility of you to back-up any data which you believe to be important, valuable or irreplaceable prior to bringing in any Products for servicing or repairs.
- 29.3 You acknowledge and agree that you will not divulge any information supplied by us that we have not made publicly available, to any third party.
- 29.4 You agree to protect all authorization details, including, but not limited to, usernames and passwords and agree that these details shall not be written or stored in any manner which could result in their unauthorised disclosure.
- 29.5 In the event that we request the change of any password or identifier relating to our system, you agree to select a password or identifier meeting our specifications and will not use commonly known details such as birthdays and or names.

30. Our responsibilities

- 30.1 We will make best efforts to ensure that you receive continual and uninterrupted Services during the term of this contract. In no event though, shall we be liable to you for damages resulting from or in relation to any failure or delay of us to provide Services under this contract. Such a failure or delay shall not constitute a default under this contract.

31. Goods supplied by you

- 31.1 Any artwork, bromides, film, video or other material supplied to us by you shall be at your risk and if lost, destroyed or damaged, you will not be entitled to make any claim against us.
- 31.2 In the case of property and goods left with us without specific instructions, we shall be free to dispose of them at the end of 12 months after us receiving them, and to accept and retain any proceeds gained from such disposal to cover our costs in holding and handling such items.

32. Subscriptions

- 32.1 The commencement date shall be the date of the first delivery of the Services under a subscription agreement, or from the date of signing, whichever, is the earlier. The subscription agreement shall be for the period ("Initial Term") as agreed between both parties and shall revert to an annual roll over month to month basis automatically, thereafter, unless agreed otherwise until terminated by either party by giving at least 30 days' required notice as defined in the subscription agreement prior to the expiration date of the Initial Term or any additional term.
- 32.2 You acknowledge and accept that all fixed contracts are subject to periodic price reviews to allow for increases to us in the cost of labour and materials, which are beyond the control of us.

33. Website hosting

- 33.1 We will, subject to our initial Order:
 - (a) install your Products on our server;
 - (b) host your Website on our server and/or our contracted third party server;
 - (c) ensure that from the live date:
 - (i) sufficient capacity is maintained on our server to enable users access to your Website in a timely manner;
 - (ii) your Website is accessible to users in accordance with the service levels (subject to reasonable downtime for server maintenance which has been notified to you prior to the commencement of the downtime or Website maintenance in accordance with Clause 33.1(d));
 - (d) provide you with reasonable access to your Website to perform maintenance services.
- 33.2 We will not:
 - (a) alter or amend, or permit any person to alter or amend your Website without the written consent of you, unless otherwise agreed between both parties;
 - (b) post or display on your Website any advertisement, sponsorship or promotion without the written consent of you;
 - (c) use any user data for marketing, referral or other purposes except as expressly authorised by this contract;

- (d) sub-licence, rent, time-share, lease, lend or grant any rights to use your Website; or
- (e) assign, transfer or authorise anyone else to exercise the rights in any licence granted pursuant to this contract.

33.3 You will, at your sole cost and expense:

- (a) develop and maintain your Website only in the event that we are expressly requested to build the Website to cater for such editing, otherwise we will deal with the general development and maintenance of the Website;
- (b) provide your goods to us, in such form as reasonably prescribed by us from time to time, and hereby grant us a non-exclusive, worldwide, irrevocable licence to use your goods for the purposes of hosting your Website;
- (c) do all things reasonably necessary to enable us to host your Website on our server;
- (d) ensure that your goods supplied to us do not contain:
 - (i) Prohibited Content;
 - (ii) a Link to any Website that contains Prohibited Content; or
 - (iii) any viruses, trojan horses, worms, time bombs or any other software program or routine designed for or capable of interfering with the operation of the hosting services.

- 33.4 You will not do anything that prevents or hinders us from providing hosting services to any other person.

34. Development of the Website

34.1 Upon approval of the specifications and Order, we will:

- (a) use our best endeavours to develop the Website in accordance with the development stages; and
- (b) to the extent specified in the specifications, negotiate and procure third party agreements on behalf of you.

34.2 You will, in addition to any other obligations expressed in this contract, have the following responsibilities:

- (a) provision of all data to be incorporated into the Website;
- (b) provision of logos, designs, graphic and related goods to be incorporated into the Website;
- (c) provision of any other information, ideas or suggestions which are to be expressly considered by us in developing the Website; and
- (d) ensure all information and data supplied to us is accurate and valid.

34.3 You will ensure that we are given such information and assistance as we reasonably require to enable us to construct and maintain the Website.

34.4 We will not be responsible for, and accept no liability for, any deficiency or alleged deficiency in the Website which is attributable to:

- (a) incorrect information provided by you, either pursuant to this clause or otherwise; or
- (b) failure by you to provide relevant information, either pursuant to this clause or otherwise; or
- (c) any 3rd party goods used by us in creation of the Website.

34.5 Subject to Clause 34.6, we will provide the maintenance services in accordance with our maintenance service agreements.

34.6 You will procure all necessary authorisations, licences and consents to enable us to have access to the Website in order to provide the maintenance services.