

TERMS OF TRADE

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PART A: OVERVIEW OF THESE TERMS

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

At Cooks AVS 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:

- (a) 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
- (b) 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

- 1.1 These Terms set out all of the terms and conditions that apply to Products and Services that we supply to you.
- 1.2 Any other terms and conditions will not apply unless expressly approved in writing by us for a particular Order.
- 1.3 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.
- 1.4 These Terms may be meant to be read in conjunction with our Service Level Agreement and Monitoring Service Agreement, and where the context so permits, the terms 'Products' and 'Services' shall include any supply of "Monitoring and Maintenance Services", as defined therein.

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

- 2.1 You may order Products and Services from us in accordance with our order processes that we advise to you at any time.
- 2.2 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.
- 2.3 We are under no obligation to enquire as to the authority of any person placing an Order on your behalf.
- 2.4 You may not initiate variations to the Services unless the following procedure is adhered to:
 - (a) you must submit a written request to us outlining the requested variation;
 - (b) we must within 5 Business Days of receiving the request, notify you in writing advising of any problems arising from the proposed change (including timing), an estimate of any additional costs arising from carrying out the change to the Services and any change to the Price. You will have 5 Business Days from receiving our notice to accept or reject the changes;
 - (c) if you:
 - (i) do not provide notice of the above within the required time frame or accept the changes contained in our notice then the exchange of notices will together amount to a variation in accordance with clause 8;
 - (ii) if you reject the changes contained in our notice, then we shall continue to carry-out the Services according to the original quoted statement of Services.

3. Delivery of Products and Supply of Services

- 3.1 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.

- 3.2 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.

- 3.3 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.

- 3.4 Subject to clause 17, 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

- 4.1 Clauses 4 and 6 applies if your Order relates to Products.

- 4.2 We may deliver Orders in instalments (unless agreed otherwise).

- 4.3 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).

- 4.4 Risk in the Products passes to you on delivery.

- 4.5 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. Second-hand Products

- 5.1 In the case of second-hand Products either of us supply, you agree that you have had full opportunity to inspect the second-hand Products prior to delivery.

- 5.2 Subject to us complying with clause 5.1, you agree that:

- (a) any second-hand Products supplied may contain defects, which will not be treated as a Defect under these Terms;
- (b) we do not give any warranty as to the quality or suitability of such Products; and
- (c) any implied warranty (statutory or otherwise) in relation to such Products, is (to the extent permitted by law) expressly excluded.

6. Defects

- 6.1 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.

- 6.2 If there are any Defects in an Order, the remedies set out in clause 25.1 will apply.

7. Cancellation

- 7.1 Either party may cancel an Order by written notice if the other party:

- (a) 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
- (b) suffers an Insolvency Event.

- 7.2 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.

- 7.3 You may cancel delivery of the Products and/or Services by written notice served within 24 hours of placement of the Order.

- 7.4 We will not accept cancellation of any Order or any Order for Products made to your specifications, or for non-stocklist items, after the Order has been accepted by us except in accordance with clause 7.

8. Variations

- 8.1 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.

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

- 8.3 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.

9. Price

- 9.1 The Price for Products and Services will be:

- (a) calculated based on our standard hourly rate as at the date of the

- Services that are provided;
 - (b) our estimated Price which shall not be deemed binding upon us, as the actual Price can only be determined upon completion of the Services. We undertake to keep you informed should the actual Price look likely to exceed the original estimate; or
 - (c) the Price that we have quoted for the Products and Services (subject to clause 9.5).
- 9.2 We may update our 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.
- 9.3 Unless otherwise stated, the Price does not include GST.
- 9.4 We may charge you for freight, insurance, installation, disbursements and any applicable taxes, duties and levies, in addition to the Price.
- 9.5 Where we provide a quotation, proposal or estimate:
- (a) 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;
 - (b) 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
 - (c) the quotation, proposal or estimate will be exclusive of any applicable additional amounts referred to in clause 9.4.

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.

10. Payment

- 10.1 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.
- 10.2 Payment shall be:
- (a) before delivery of the Products; or
 - (b) on completion of the Services; or
 - (c) by way of instalments/progress payments in accordance with the Order; or
 - (d) as indicated on our invoice; or
 - (e) 20th of the month following that we have approved; or
 - (f) no later than 7 days from the date of the invoice (unless otherwise stated on the invoice), and
 - (g) in full without deduction, withholding, set-off or counterclaim.
- 10.3 Where you hold a trade credit account with us, the total Price for the Services is payable without setoff or deduction before the 20th day of the month following date of invoice.
- 10.4 If you have any dispute relating to an invoice issued by us, you:
- (a) must notify us of that dispute in writing within 5 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.
- 10.5 We and you each agree to promptly deal with any disputed invoices and, where possible, to resolve disputes before the due date for payment.

11. Credit terms and repayment obligations

- 11.1 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 18.3).
- 11.2 You must notify us immediately:
- (a) 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
 - (b) if you are a company and there is a material change in your effective management or ownership.

12. Deposit and guarantee

- 12.1 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.
- 12.2 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.

13. Rights to recover Products

- 13.1 We retain ownership of all Products that we supply to you until we have received payment in full of the Amount Owing.
- 13.2 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.
- 13.3 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.

14. Late payments

- 14.1 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:
- (a) suspend, or cancel (in accordance with clause 7.1(a)), the provision of any or all Products and Services to you;
 - (b) cancel any rebates or discounts (whether or not previously credited); and

- (c) 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.

15. Costs of recovering Amounts Owing

- 15.1 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.

16. Security interests

- 16.1 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 13.1) (**Security Interest**), to secure the payment by you to us of the Amount Owing.
- 16.2 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).
- 16.3 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.
- 16.4 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.

17. Health and safety

- 17.1 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.
- 17.2 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.
- 17.3 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).

18. Privacy

- 18.1 We may collect, use and share Personal Information:
- (a) for the purposes of the performance of our obligations or exercise of our rights under these Terms; and
 - (b) in accordance with the Privacy Act 2020.
- 18.2 We may share Personal Information with our Related Companies.
- 18.3 We may use the services of credit reporters and debt collection agencies to manage credit and recover amounts owing. 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.
- 18.4 The credit reporters we may use are Centrix, Equifax, and Experian. Details of how the credit reporters handle your Personal Information can be found in their privacy policies:
- (a) Equifax: <https://www.equifax.co.nz/privacy>
 - (b) Centrix: <https://www.centrix.co.nz/privacy-statement>
 - (c) Experian: <https://www.experian.co.nz/privacy-policy>
- 18.5 The debt collection agency we use is EC Credit Control (NZ) Limited. Details of how they handle your Personal Information can be found in their privacy policy: <https://www.eccreditcontrol.co.nz/privacy/>
- 18.6 By accepting these Terms, you understand that:
- (a) we may use the credit reporters credit report services to credit check you;
 - (b) in doing so we may provide your Personal Information to the credit reporter, and they will store this information on their systems and use it to provide reporting services to us and their customers;
 - (c) the credit reporters may provide us with Personal Information they hold about you for the purposes of a credit reference;
 - (d) if you default on any payment obligations, information about the default may be given to the credit reporters, and they may share this information with their customers;
 - (e) we may use the credit reporting services for purposes relating to the provision of credit to you. This may include using the credit reporters monitoring services to receive updates if any of the information held about your changes; and
 - (f) you have rights of access to, and correction of your credit information and any other Personal Information held by the credit reporters as set out in their privacy policy.
- 18.7 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 18. You also confirm that you have informed the individual of their rights to access and request correction of Personal Information.
- 18.8 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.

19. Confidentiality

- 19.1 Each party must keep confidential all Confidential Information.
- 19.2 Nothing in clause 19.1 prevents a party from disclosing Confidential Information if disclosure is:
- (a) required by law or a Regulator (but only to the extent required or, if applicable, requested by a Regulator);
 - (b) is reasonably required to enable a party to perform its obligations or exercise its rights under these Terms; or
 - (c) 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.
- 19.3 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.

20. Insights and Intellectual property

- 20.1 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:
- (a) 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 20.1 is in a fully aggregated and de-identified form (so that it does not identify you or any individuals); and
 - (b) we will not use information that we collect in connection with the provision of Products and Services to you, in accordance with this clause 20.1, if you have informed us that you do not authorise us to do so.
- 20.2 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 20.1. However, for clarity, we own the intellectual property rights in all Insights.
- 20.3 We (or our licensors) own all rights, title and interest in the intellectual property rights in the Products and Services at all times.
- 20.4 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.
- 20.5 You assign all intellectual property rights to us with effect from creation to the extent required to give effect to clause 20.3 and 20.4, and agree to do all things reasonably required by us to give effect to such assignment.
- 20.6 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.

21. Dispute Resolution

- 21.1 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**).
- 21.2 Following receipt of a Dispute Notice:
- (a) a Representative of each of us (with authority to settle the dispute) will meet, within 10 Business Days, to try to resolve the dispute;
 - (b) 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
 - (c) if the dispute is not resolved by our respective Representatives in accordance with clause 21.2(b), then either party may commence court proceedings.
- 21.3 This clause 21 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 21.
- 21.4 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.
- ## 22. Consumer Guarantees Act
- 22.1 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.
- 22.2 If you are acquiring any Products for the purpose of resupply in trade, you undertake that you will:
- (a) contract out of the CGA to the maximum extent permitted by law in your contracts with your own customers; and
 - (b) 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 22.2.

23. Warranties

- 23.1 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:
- (a) 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
 - (b) minor deviations in specification, measurements, colour, weight, size or strength of the Products.
- 23.2 You acknowledge that, except for the warranty set out in clause 23.1 and any written materials that we provide to you:
- (a) 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 23.2 is subject to any rights that you may have under the CGA (in accordance with clause 22).

24. Third party suppliers

- 24.1 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.

25. Limitation of liability

- 25.1 To the extent permitted by law, subject to clause 25.3, 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.
- 25.2 Subject to clause 25.3, 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.
- 25.3 Nothing in these Terms (including clauses 25.1 and 25.2) will limit or exclude our liability for:
- (a) any fraudulent act or omission;
 - (b) a breach of clause 19 (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.
- 25.4 The limitations and exclusions on liability in this clause 25 will apply irrespective of whether the legal basis for the applicable claim contract, equity or tort (including negligence). However, this clause 25 does not limit or exclude any rights that you may have under statute.
- 25.5 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.

26. General

- 26.1 **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 Napier courts of New Zealand.
- 26.2 **Previous Agreements:** These Terms supersede and replace any previous written agreements between the parties relating to the Products and Services.
- 26.3 **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.
- 26.4 **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 Owed by you to us.

- 26.5 **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).
- 26.6 **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.
- 26.7 **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.
- 26.8 **Survival:** Any provision of these Terms, which is by its nature a continuing obligation, will survive termination.
- 26.9 **Rights of Third Parties:** These Terms are not intended to confer a benefit on any person other than the parties to these Terms.
- 26.10 **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.
- 26.11 **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.
- 26.12 **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.

27. Definitions

Amount Owed means any amount owed by you to us, from time to time, including the Price, any applicable amounts referred to in clause 9.4, any interest payable by you, your liability under these Terms and any enforcement costs incurred by us in seeking payment of any Amounts Owed 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:

- in the public domain, other than as a result of a breach of these Terms;
- in the possession of a party prior to the commencement of these Terms without any obligation of confidentiality; and
- 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.

Extra Work means work authorised by you and carried out by us for which an extra charge is payable at our normal rates in addition to work accepted by you in a written quotation. Extra Work includes:

- service work undertaken on a 'do and charge' basis and is not necessarily specified as exclusions in any quotation;
- repairs and replacement parts, except in the event that such work is completed under warranty as agreed by us; or
- system maintenance, unless otherwise agreed by us in writing.

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):

- the primary, or all, of your business activities is suspended or ceases
- the presentation of an application for your liquidation;
- the making of any compromise, proposal or deed of arrangement with all or some of your creditors;
- the appointment of a liquidator, receiver, statutory manager, or similar official;
- your suspension or threatened suspension of the payment of your debts as they fall due;
- the enforcement of any security against the whole or a substantial part of your assets;
- if you are an individual, anything having a similar effect to any of the events specified above happens in relation to you; or
- 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 9.1.

Products means any Products (and associated services) supplied by us to you at any time, including the Products specified in an Order.

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 (including monitoring services) supplied by us to you at any time, including the Services specified in an Order.

Specific Terms means the terms (if any) that are included in Part I to these Terms.

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, Cooks AVS Limited.

You or your means the customer purchasing Products and Services from us.

28. Interpretation

In these Terms, unless the context otherwise requires:

- headings are for convenience only and do not affect interpretation;
- 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;
- 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;
- the words "include" or "including", or similar expressions, are to be construed without limitation;
- a reference to a party to includes that party's successors and permitted assigns and substitutes; and
- 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.

29. Additional charges

29.1 Where you are a tenant (and therefore not the owner of the site) then you warrant that you have obtained the full consent of the owner for us to deliver the Products to the site. You acknowledge and agree that you shall be personally liable for full payment of the Price for all Products and Services supplied under this contract, and to indemnify us against any claim made by the owner of the site (howsoever arising) in relation to the supply of Products by us, except where such claim has arisen because of the negligence of us when supplying the Products.

29.2 In the event that we are required to provide the Services urgently, that may require our staff to work outside normal business hours (including, but not limited to, working through lunch breaks, weekends and/or public holidays) then we reserve the right to charge you additional labour costs and hourly rates (penalty rates will apply at time and a half normal rates), unless otherwise agreed between us both.

29.3 Hourly rates will be payable by you for any Services carried out by us which are not set out in the schedule of Services contained in any quotation or order, including Extra Work and any variation to the Services.

29.4 The supply of Products for accepted Orders may be subject to availability and if, for any reason, Products are not or cease to be available, we reserve the right to substitute comparable Products (or components thereof) and vary the Price as per clause 8. In all such cases we will notify you in advance of any such substitution and reserve the right to place your Order on hold until such time as we both agree to such changes.

29.5 Any telecommunication connections required for the installation and/or maintenance of the Products will be arranged and paid for by you unless otherwise agreed in writing.

29.6 We reserve the right to change the Price:

- in the event of a variation to our quotation. Any variation from the plan of scheduled Services or specifications of the Products (including, but not limited to, any variation as a result of Extra Work required due to the discovery of hidden or unidentifiable difficulties which are only discovered upon delivery, such as any existing cabling which do not comply with New Zealand Standards and causes the new installation to be non-compliant, poor weather conditions, limitations to accessing the site, obscured site defects which require remedial work, health hazards and safety considerations, prerequisite work by any third party not being completed, etc.), or
- due to increases to us in the cost of materials and labour (including additional transportation, packing, freight, storage, handling, insurance, or government, statutory or regulatory charges that relate to the supply of the Products or Services, or fluctuations in currency exchange rates, shipping, brokerage, freight, insurance, taxes or duties) which are beyond our control. This will be detailed in writing and charged for on the basis of our quotation and will be shown as variations on the invoice.

30. Specifications

30.1 You acknowledge and accept that:

- all descriptive specifications, illustrations, drawings, data, dimensions, and weights stated in our fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. You shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of this contract, unless expressly stated as such in writing by us; and
- you shall allow us to attach reasonable signage of ours to your site, to identify us providing any Services on behalf of you.

31. Extra Work and/or varied services

31.1 We agree that there will be no charge in the preparation of the initial quotation, which may include discussions, project scoping, research, testing and business analysis, etc. However, in some instances the Services may be charged to you additionally. In the event you require proofs, mock-ups,

- layouts, samples, dummies, printed, typewritten or other good copy and/or edits, this shall be invoiced at our hourly rate unless specified otherwise in the initial quotation. This variation shall be detailed on the invoice as per clause 8.
- 31.2 We reserve the right to amend the Price where there is any variation to the accepted plan of scheduled Services, or instructions/specifications, which will be charged for on the basis of our standard hourly rates (and double such rate for any Services provided outside our normal business hours) and will be shown as variations on the invoice. You shall be required to respond to any variation as per clause 8.
- 32. Your responsibilities**
- 32.1 It shall be your responsibility to ensure that all security software and updates, any firewalls that should be activated, appropriate user practices and any other security measures recommended by us are carried out. Failure by you to comply with our security recommendations could then result in a breach of security measures (such as targeted cyber-attacks, internet outage or any other situations beyond anticipation by us), then we accept no responsibility or liability for any loss (including loss of income), damages, or costs however resulting from these events.
- 32.2 Where we have provided software, we retain ownership of the software but grant a licence to you for use of the software. You will use any software supplied by us strictly in terms of the licence under which it is supplied and shall not modify, change, or copy any such software. You will use any third-party software supplied by us, and identified as such, strictly in terms of the licence under which it is supplied.
- 32.3 You shall provide clear and reasonable access to the site on the date of installation, as agreed between us both. Delays to our technical staff waiting for access and/or clearing of obstacles, or other causes made by you, may result in additional fees to be added to the Price.
- 32.4 You shall obtain (at your expense) all permits, authorisations, licenses, consents and approvals that may be required for the Services.
- 32.5 It shall be your responsibility:
- (a) to ensure the security system equipment is tested and maintained to full operational condition;
 - (b) for all phone calls emanating from the security system panel; and
 - (c) to ensure all electronically protected areas are free from obstacles which may impair the operation of the system.
- 33. Your warranties**
- 33.1 You:
- (a) shall provide, at your cost, power connection to enable installation and/or service work to be undertaken at the site. Any telecommunication connections required for the installation and/or maintenance of a security system will be arranged and paid for by you unless otherwise agreed in writing;
 - (b) warrant that all information supplied to us in connection with the supply of Products is true and accurate, and acknowledge that we have relied on that information in supplying the Products;
 - (c) acknowledge that while we may have provided information to you about the performance of the Products generally, it has not made any representation or warranty concerning the performance of the Products or the suitability of the Products for the site;
 - (d) warrant that notwithstanding sub-clause (c), you have not relied upon any representation or warranty concerning the performance of the Products or the suitability of the site;
 - (e) warrant that any structures to which the Products are to be affixed are able to withstand the installation of the Products and that all electrical and plumbing infrastructure and installations at the site (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cable ("System") are of suitable capacity to handle the Products once installed. If, for any reason (including the discovery of asbestos, defective or unsafe wiring, or dangerous access to roofing), we reasonably form the opinion that the site is not safe for the Services to proceed then we shall be entitled to delay the Services until we are satisfied that it is safe to proceed; and
 - (f) acknowledge that if the System is not compliant with all laws, you may be required to repair or replace those parts of the System that are non-compliant at your own cost prior to delivery.
- 34. General risk**
- 34.1 You acknowledge that we are only responsible for parts that are replaced by us, and in the event that other components/goods, subsequently fail, you agree to indemnify us against any loss or damage to the Products, or caused by the goods, or any part thereof howsoever arising.
- 34.2 We shall accept no responsibility for any damage which may arise during installation of the power points, switches, data ports in the event that any third-party contractor employed by you has removed any or all reference to the positioning thereof by either plastering or erecting GIB board over the designated area. You accept that the installation thereof will then be at the sole discretion of ours, and if you believe you have any claim in relation to the work undertaken by that third party then the said claim must be made against the third-party contractor in the first instance.
- 34.3 In the event that the electrical wiring is required to be re-positioned at the request of any third party contracted by you then you agree to notify us immediately upon any proposed changes. You agree to indemnify us against any additional costs incurred with such a relocation of electrical wiring. All such variances shall be invoiced in accordance with clause 8.
- 34.4 In the event that we discover asbestos or hazardous materials whilst supplying the Services, we shall immediately advise you of the same and shall be entitled to suspend the Services pending a risk assessment. You shall be liable for all additional costs incurred by us (howsoever arising) as a result of the discovery of asbestos or hazardous materials and/or any suspension of the Services in relation thereto. Where we agree to remove any asbestos or hazardous materials on your behalf then you shall be liable for all costs incurred by us in the removal and disposal those materials.
- 34.5 You agree to indemnify us from any damage caused by any other tradesmen during and after the completion of the Services. If you instruct us to rectify any damage caused by any other tradesmen, this will be considered a variation to the Price as per clause 8 and will be charged at our standard hourly rate.
- 34.6 You accept that all Products and/or electronic security systems, smoke detectors, heat detectors and any similar devices installed at or attached at the site:
- (a) are for monitoring and detection purposes only and should not be regarded as life saving devices; and
 - (b) do not guarantee that the site will be free from malicious damage or loss caused by attack and/or breaking or entering.
- 35. Access and damage**
- 35.1 You shall ensure that we always have clear and free access to the site to enable us to affect delivery. We shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to our negligence. You agree to ensure that the site shall at all times be a safe working environment and (without limitation) shall not contain asbestos or any other such similar hazard of any infections or building disease.
- 35.2 You shall advise us in the event of any changed circumstances, or planned changes to the site which might affect our ability to affect delivery in a safe manner.
- 35.3 We shall not be held responsible for any damage to dug up/cut cabling caused by outside agents. Where you request us to provide additional Services where such damage occurs, then we reserve the right to charge you for any costs incurred in doing so.
- 36. Hidden services**
- 36.1 Prior to delivery, you must advise us of the precise location of all hidden services on the site and clearly mark the same. The hidden mains and services you must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on the site.
- 36.2 Whilst we will take all care to avoid damage to any hidden services you agree to indemnify us in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 36.1.
- 37. Fixed term agreements**
- 37.1 The commencement date shall be on the date of commissioning. Fixed terms agreements shall be for the period ("initial term") as agreed between both parties and shall revert to a monthly roll over basis automatically, thereafter, unless agreed otherwise until terminated by either party by giving at least 1 months required notice as defined in the agreement prior to the expiration date of the initial term or any additional term.
- 37.2 You acknowledge and accept that the Price stated will remain fixed for an initial period of 12 months from the date of the agreement and will then be subject to revision on the basis of the movement in the Consumer Price Index (CPI).
- 37.3 Either party may terminate the fixed term agreement for Services or any one or more schedules immediately by written notice being not less than 30 days of their intent to terminate at any time after the initial agreement period (as specified in our quotation, Monitoring or Maintenance Service Agreement) has ended.
- 37.4 Where you wish to terminate the fixed term agreement during the term stipulated, you must pay us the remaining fixed term fees which would otherwise have been payable to us during the fixed agreement term unless otherwise agreed.
- 37.5 You shall pay an establishment fee on the commissioning date or no later than the 20th day of the month following the date when commissioned.
- 37.6 No fees paid during this term shall be refundable unless the refund is reasonable under the circumstances.
- 37.7 We reserve the right to terminate the Services in any given month, by written notice either via email or text, for any outstanding accounts over 60 days.
- 38. Additional grounds for termination**
- 38.1 We may terminate this agreement by notice in writing to you (and such termination shall not give rise to claim by you against us. The conditions of termination may include:
- (a) at any time, we are unable to obtain or retain the necessary rights and privileges for the transmission of signals between your premises and our monitoring base; and
 - (b) our monitoring base or the cabling, wiring and equipment were destroyed by fire, earthquake, or other events (known as a natural occurrence) or are so damaged that it is impossible or impractical for us to provide the Services.
- 39. Provision of patrol services**
- 39.1 You acknowledge that:
- (a) patrol services are shared with other customers. There may be occasions when individual patrols are late or missed due to the need to respond to high-priority events such as break and enters. Other unforeseen circumstances such as storms or vehicle breakdown may also cause individual patrol calls not to be undertaken. This is taken into consideration when setting patrol pricing. Any on-going problems related to our inability to complete agreed patrols for more than 10% of the agreed contract will be notified to you and adjustments will be negotiated to patrol services and/or credit/refunds given for the undelivered Services exceeding this percentage; and
 - (b) any associated patrol services shall be charged additionally to you.
- 39.2 You will inform us if there are any changes to the site if these changes have the potential to restrict the provision of the patrol services or cause any harm to the patrol officers.
- 40. Our responsibilities**
- 40.1 We agree to use due care and skill to provide the Services for alarm signals and/or other recurring services selected by you.
- 40.2 We shall action alarm signals emanating from the alarm in accordance with your documented instructions and our standard operating procedures.
- 40.3 Whilst we shall endeavour to provide a timely response to actionable alarm signals, no warranty is given by us that patrol response will be available at any time, if at all. We shall not be liable for any loss or damage you may suffer in connection with any response or the absence of any alarm response.

- 40.4 Whilst we use due care when contacting and advising emergency services, we cannot guarantee prompt response times or attendance of such services.
- 40.5 You acknowledge that we will retain archived security log and recordings for a period of 7 years, after which this information will be destroyed unless otherwise requested by you.
- 40.6 We warrant that we shall comply with all requirements to maintain New Zealand Security Association (NZSA) grading certifications, and where you so requests, provide such evidence of the certification for you to view. Such requirements include, but is not limited to:
- (a) telephone calls associated with alarm events shall only be validated and actioned by a licenced operator situated within the monitoring shell;
 - (b) no provision or facility to pick up or action alarms from outside the monitoring shell;
 - (c) where there is facility for remove 'placing on test' by on-customer-premises, customer or licenced technicians, all customers have contractually agreed to this facility in writing; and
 - (d) all 'indicating and recording equipment' is contained within a monitoring centre of the same grade certified or higher and applies to both the building and operation components of the grading.
- 41. Your additional responsibilities**
- 41.1 Prior to commencement of the CCTV Services, you must:
- (a) advise that the existing broadband has a fixed IP address;
 - (b) supply correct username and passwords of the modem to be used;
 - (c) ensure the broadband modem is operational at the time of installation; and
 - (d) ensure the broadband modem is a suitable type and have the programming instructions readily available to permit "Port Forwarding" functions.
- 41.2 You accept and agree that:
- (a) future faults with your modem are not covered under warranty;
 - (b) there may be additional data charges (charged by your telecommunication providers) for any data usage in setting up, testing and remote viewing the CCTV System, such charges are borne by you;
 - (c) prior to our attendance it is your responsibility to ensure you upgrade your data plans (where applicable) for your mobile phones and internet to ensure that you do not get overcharged for data usage; and
 - (d) any ongoing electrical power charges for running the CCTV equipment is additional to the Services provided.
- 41.3 You shall:
- (a) immediately advise us, in writing, in the event of any changes to your contact details or alarm response requirements;
 - (b) at your own cost, maintain the alarm in good working order and in accordance with the manufacturer's requirements (including, but not limited to, recharging, or replacing batteries on a timely basis). The obligation of us to provide the Services and to action alarm signals, are conditional upon the alarm being operational, in accordance with the manufacturer's requirements, and to the satisfaction of us; and
 - (c) supply us at your expense keys, swipe cards, alarm codes, electronic access controls to the site, to enable us to carry out alarm responses and/or patrols. Our liability for loss or damage of your keys, swipe cards, etc. is limited to the costs of obtaining a replacement.
- 41.4 In the event that you do not claim your keys, swipe cards, alarm codes, electronic access controls within 30 days of the termination or expiration of the Services, we shall be entitled to destroy them.
- 41.5 You shall ensure that all voice codes, passwords, radio keys and other security devices are kept secure and provided only to those persons who reasonably require access to the site.
- 41.6 You cannot transfer, or attempt to transfer, the right to receive the Services or any other right to any other party.
- 41.7 Upon termination of the Services, it is your responsibility to ensure that an alternative service is arranged, if required, and the panel is deprogrammed to stop reporting to us.
- 41.8 We will not be responsible for any communication costs post cancellation (including, but not limited to, telephone charges, etc.), and signals received after the termination of the Services and will not be actioned by us.
- 41.9 You agree that any costs associated with the provision of services by the police, ambulance, fire or other emergency services to the site shall be met by you.
- 42. Monitoring services**
- 42.1 The Services provided by us shall consist of the monitoring (including camera and video monitoring) of all signals that have been programmed into your system at our monitoring station from the alarm system designated in your information sheet which shall be supplied to you.
- 42.2 Remote programming shall be made onto security devices by our control room operators, technicians, or contractors on computer devices.
- 42.3 Remote arm and disarm shall be on your request, technician, or guard.
- 42.4 We shall respond to such signals received in accordance with our normal operating practices and by making such telephone calls as may be required in accordance with your instructions. You acknowledge that alarm responses are considered as Extra Work and charged at our normal rates, subject to clause 42.11.
- 42.5 We shall endeavour to action the following alarm system signals generally as described below or as otherwise agreed or interpreted:
- (a) duress / panic – we shall call the site, as required by the police first to verify the event. If deemed necessary, we shall contact and advise the police;
 - (b) hold up – we shall notify the police, and make a follow up call to the site after 30 minutes (this clause assumes that the site complies with police's protocols for hold up alarms);
 - (c) fire / smoke – we shall call the site to verify the event, if no answer we will advise fire department and contacts (we will dispatch a guard to the site if no contacts are available and keys are held);
 - (d) medical – we shall call the site to verify the event, if no answer we will advise ambulance service and contacts (we will dispatch a guard to the site if no contacts are available and keys are held); and
 - (e) system events – we shall contact you and shall advise service department if necessary (this type of event is not necessarily actioned immediately).
- 42.6 In the event that the site is found to have been violated and you are unable to be contacted by telephone, you authorise us to arrange for a security guard to attend and remain at the site as an agent, if we consider it necessary, until you are contacted, and we are given instructions. Alternatively, we are authorised to arrange temporary work to secure the site with you agreeing to pay for such work as per clause 42.9.
- 42.7 You shall be entitled to 1 false alarm response per calendar year. We shall be entitled to charge you for any response to any additional false alarms within that period.
- 42.8 You acknowledge and accept that, for various lawful reasons (including, security, training, and monitoring purposes), phone calls made to us may be recorded.
- 42.9 You accept and acknowledge that in the event we act as an agent on behalf of you with a third party, (including, but not limited to, locksmiths and/or glaziers) you agree to honour your obligation for payment for such transactions invoiced by the third party and shall ensure payment is made by the due date, thereby not limiting us in our obligations for payment as an agent acting on behalf of you to third parties.
- 42.10 If you believe that you have any claim in relation to Services undertaken by that third party, then the said claim must be made against the third-party contractor in the first instance.
- 42.11 You acknowledge that independent contractors, where available, may provide patrol response. Accordingly, patrol response fees may vary from area to area and over time. You agree to pay or reimburse us for patrol response fees, which may include an administration fee. We shall advise you of applicable patrol response fees upon your request.
- 42.12 We may be unable to monitor the system in the event of a communication failure between the alarm panel at the site and the monitoring centre, failures of this nature may be malicious or otherwise. You acknowledge that our obligation to action alarm events is suspended at any time the communications link is disrupted between the site and our monitoring room.
- 42.13 In the event you wish to cancel the Services, you must provide us with 1 month's written notification, or in lieu of such, pay to us 1 month's charges which would have otherwise been payable to us for that period.
- 42.14 Where applicable, if you do not have a body corporate for monitoring and billing purposes, we shall not be held responsible to notify you. This remains the responsibility of the dealers or your engaged operator for whom we are performing the Services, at all times.
- 43. Special conditions for CCTV**
- 43.1 We reserve the right to abandon the setup of "remote view" functions if unreasonable delays are caused by factors out of our control such as modem compatibility, router issues, IT department delays, data plans, unknown passwords, etc.
- 43.2 We will give basic training to 1 staff member on system operation for up to 1 hour, providing this person is on site at the time that the installation Services concludes.
- 43.3 If any existing cameras, wiring, etc. are found to be faulty or inadequate, we will continue with the installation and omit those items from the system. At the end of the Services, we will be entitled to receive full payment for the job even if we have omitted faulty items from the system.
- 43.4 Existing equipment (if faulty) will not be repaired for free. We will however provide you with another quote for rectifying any such equipment (if applicable).
- 43.5 Training and commissioning will not occur until final payment is made.
- 43.6 Using the equipment is relatively simple for most people but if further retraining sessions or additional technician visits are required for any other reason which is not covered by warranty, for example, to retrieve footage or for making good anything excluded in these Terms, there will be additional charge equal to our normal rates for providing that Service.
- 43.7 It is expected that you will make every effort to allow the installation of this equipment to go as rapidly and smoothly as possible by giving fair and unimpeded access to the job area during normal business hours. Unreasonable delays caused by factors out of our control may incur an additional charge to cover that time if such delays cause us additional costs to carry out the Services.
- 43.8 Cameras require periodic cleaning (by others) to ensure proper operation.