

# TEAMnetwork Terms and Conditions

## Effective October 2012

### 1. Interpretation and Definitions

"TEAMnetwork", "We", "Our" or "Us" means TEAMnetwork Systems Limited or any member of the group of companies operating under license from TEAMnetwork Systems Limited, their agents or employees.

"The Customer", "You" and "Your" means the party or parties who enter into this agreement with TEAMnetwork and includes any agent or employee of the Customer, or any contractor acting on behalf of The Customer.

"Event of Default" means an event where any of the following apply:

- An act of bankruptcy is committed; or
- A composition or arrangement is entered into with creditors; or

In the case of a company:

- An action is taken which would result in you becoming liable to be put into liquidation; or
- A resolution is passed or an application is made for liquidation; or
- A receiver or statutory manager is appointed over all or any of your assets.

"Force Majeure" means an event, except an Event of Default, beyond the reasonable control of either party, which makes it impossible or illegal to perform, or prevents compliance with or the performance of, a party's obligations under this agreement.

The terms and conditions are subject to reasonable interpretation and accepted by you as primarily for the protection of our interests when establishing and maintaining a business relationship with you.

### 2. Introduction

The parties to this agreement are TEAMnetwork and The Customer.

These terms and conditions apply to any and all agreements or contracts between the parties and will prevail in the case of any conflict with any other agreement or contract, unless otherwise specifically agreed to in writing. There are no representations or understandings between the parties that are not fully expressed in this agreement. This agreement supersedes any prior terms and conditions of business we may have had with you.

These terms and conditions may be changed in any respect by us at any time provided we notify you of the proposed changes and give you at least one month's notice of our intention to do so. When we give you such notice we are also implicitly notifying you of our intention to terminate this agreement and all other agreements or contracts under the terms of clause 10.

### 3. Governing Law

All agreements and contracts are governed by and construed in accordance with the laws of New Zealand.

### 4. Severance

If any provision of any agreement or contract is held to be illegal, invalid, or unenforceable, it will be severable, will be deemed to be deleted and will not affect the validity or enforceability of other provisions contained therein.

### 5. Assignment / Sub-contracting

Neither party shall assign or sub-contract all or part of any agreement or contract, or any interest in it, without the other party's prior written consent.

### 6. Successor in Interest

A successor in interest by merger, by operation of law, assignment, purchase or otherwise of the entire business of either party, shall acquire all interest of such party.

### 7. Dispute Resolution

7.1 If a dispute arises between the parties in relation to any matter arising out of any contract or agreement between you and us, the parties shall enter into negotiations in good faith to try to resolve the dispute. Either party may initiate negotiations by giving written notice to the other party. Each party must nominate a representative with authority to settle the dispute. Within 5 working days of both parties having been advised of the other party's representative, the representatives must enter into open and frank discussions to try to resolve the dispute.

7.2 If the dispute has not been settled within 10 working days of negotiations being initiated, the dispute will be mediated. Either party may initiate mediation by giving written notice to the other party. A mediator shall be agreed on by the parties, but if the parties cannot agree on one within 7 working days after the mediation has been initiated, the mediator shall be appointed by the President of the District Law Society agreed by both parties or if they cannot agree, the Wellington District Law Society.

7.3 If the dispute has not been settled within 10 working days after the appointment of a mediator (or within a longer period if agreed to in writing by the parties) then the parties will refer the dispute to arbitration in accordance with the Arbitration Act 1996 (or any statutory modification or amendment to that Act). Either party may commence the arbitration by giving written notice to the other stating the subject matter and details of the dispute and that party's desire to have the dispute referred to arbitration. The arbitration shall be conducted by one arbitrator agreed by the parties. Failing agreement on an arbitrator, the arbitrator shall be appointed by the President of the District Law Society selected under clause 7.2. The decision of the arbitrator shall be final and binding on the parties, and the costs of the arbitration shall (subject to any award by the arbitrator) be borne equally by the parties.

7.4 While any dispute resolution is in process, the parties shall continue to perform their obligations under the agreement as far as possible as if no dispute had arisen, pending final settlement of the dispute.

### 8. Confidentiality

8.1 Neither party shall use, disclose, reproduce or otherwise make available, sensitive or proprietary information provided by the other party to any person, firm, or enterprise (other than each party's employees or agents who have a need to know such information to perform their duties), unless specifically authorised in writing to do so by the other party.

8.2 Both parties shall keep confidential all data and other information which comes into their possession that is related to the business of the other party.

### 9. Good faith

Both parties will act in good faith in the performance of their respective obligations under any agreement or contract between them, and will do all things reasonably necessary to give effect to such agreements or contracts.

### 10. Termination or Breach

10.1 Either party may terminate any agreement or contract by giving the other party written notice of their intention to do so. The effective date of termination will be the greater of one month or the minimum termination notice period of any agreement or contract.

## TEAMnetwork Terms and Conditions Effective October 2012, *continued*

10.2 This agreement cannot be terminated earlier than any other agreement or contract you have with us except where we offer you, and you agree to be bound by a later version of this agreement.

10.3 Either party may terminate any agreement or contract by notice in writing if the other party materially breaches any agreement or contract between them, and does not remedy the default or put all reasonable steps in place to prevent the default for recurring within one month after receiving notice of default from the terminating party. Termination on performance grounds may not occur unless the parties have used the dispute resolution process in clause 7 through to its conclusion.

10.4 Either party may, with the permission of the other party, revoke their notice of termination prior to the expiry of any notice period and all agreements or contracts will continue to operate as if the notice to terminate had not been given.

10.5 In the event of termination, you agree:

10.5.1 We will be entitled to payment for products and services supplied to you up to and including the date of termination;

10.5.2 To pay for the time we require to disestablish any services we have provided to you or prepare and handover any documentation you have requested;

10.5.3 The following clauses or sections will survive the termination of any agreement or contract between the parties: 8 and 16.1;

10.5.4 That your obligations under any agreement or contract with us that are related to the use of any credit facility you may have with us will survive termination and continue until your account is settled in full.

### 11. Force Majeure

11.1 If either party is unable to perform its obligations under any agreement or contract between them because of any Force Majeure, the party unable to perform shall promptly give notice to the other party, and shall not be in breach of that agreement or contract.

11.2 If the impact of the Force Majeure continues for one month or more without substantial performance of the agreement being able to resume, either party may terminate any agreement or contract by giving 7 days written notice to the other.

### 12. Limitation of Liability

Except where specifically noted to the contrary in any agreement, under no circumstances shall either party, their employees, or agents be liable to the other in contract, tort (including negligence or, breach of statutory duty) or otherwise for loss of profits, business or anticipated savings or for any indirect or consequential loss whatsoever that may be incurred.

### 13. Use of Information

13.1 We may obtain information about you or your directors or owners from you or any other person for the purposes of establishing or maintaining your credit facility with us, and you consent to any person providing us with such information.

13.2 We may give any information we have about you or your directors or owners relating to your credit worthiness to any other person, including any credit or debt collection agency for credit assessment and debt collection purposes.

13.3 We may contact you by any method to provide you with information on our products and services or any other information we deem relevant to our business relationship with you.

### 14. Supply of Products (Including Software and Licenses)

14.1 Any products supplied to you by us shall remain our property until payment is received by us in full and in clear funds.

14.2 We may establish or continue to hold, a security interest in respect of any product we supply or have supplied to you, for the purposes of collateral security in relation to your account with us.

14.3 We may establish any such security interest by registration of interest on the Personal Property Securities Register. You agree to waive any right to receive a verification statement under the Personal Property Securities Act 1999 ("PPSA").

14.4 In respect of any security agreement we may establish, you agree to waive any rights under sections 114(1)(a), 117(1)(c), 133 and 134 of the PPSA, and you agree to waive your rights as a debtor under sections 116, 119, 120(2), 121, 125-127, 129 and 132 of the PPSA.

14.5 Where we have a security interest in, or ownership of, any products in your possession you agree to act as a fiduciary and:

14.5.1 You will not sell, dispose of or otherwise part with possession of the products other than for their full market value in the ordinary course of your business;

14.5.2 You will not cause or allow any security interest to be established in respect of the products by anyone except us;

14.5.3 You will hold all the proceeds of resale or use of the products in trust for both you and us. Our interest as a beneficiary under that trust shall be that portion of the proceeds which does not exceed all amounts you owe us — you will be entitled to the balance of the proceeds.

14.6 You accept that any products supplied are for business purposes, and therefore not covered by the Consumer Guarantees Act 1993.

14.7 We do not provide or warrant any guarantee of fitness for purpose nor will we be liable for defects in products or services supplied or manufactured by us or any third party. A manufacturer's warranty may apply to such products.

14.8 Risk in the products will pass to you upon delivery.

14.9 Where an Event of Default occurs, or where the undisputed portion of your account with us is in arrears by two months or more and provided we have given you 24 hours written notice of our intentions, we can enter the premises where the products we own, or have a security interest in, are located and remove them. You will be solely liable for any damage caused in doing this, provided the damage was as a result of the use of the minimum amount of force required to gain access to the products and remove them safely. We can dispose of the products in any manner and apply the proceeds against any amount of money you owe to us.

14.10 You will obtain and continue to hold sufficient insurance cover to protect the full market value of any security interest or ownership we may have in the products.

14.11 You agree that we may identify any product we hold a security interest in, or have ownership of, by way of an order, invoice or other record from our suppliers or us that is attributable to an order you placed with us and subsequently delivered to you.

14.12 Returned products will be credited to you provided we are notified within 7 working days of dispatch, and the returned product has not been used, opened or otherwise deemed non-saleable by us. Returns are subject to a restocking fee. You will be liable for all delivery and insurance charges incurred in respect of returned products. We may require you to complete a Returns Request before sending any products back to us. If we do this we must approve the Returns Request before you can return any products.

## TEAMnetwork Terms and Conditions Effective October 2012, *continued*

14.13 Where we hold any products at our premises or at any other location on your behalf for the purposes of storage, configuration, repair or fault diagnosis, you agree that our liability is limited to any insurance policy we hold for this purpose that we are successfully able to claim under. You are responsible for 50% of the excess of any such claim that you direct us to make, and for any other liability in excess of the claim.

14.14 You will make reasonable efforts to preserve and maintain the benefit of manufacturer or supplier warranties in respect of any products we supply to you.

### 15. Copyright and Software Licenses

15.1 We (or our licensors) shall retain ownership of copyright in all software, documents and information supplied to you unless otherwise expressly agreed in writing.

15.2 You are solely responsible for ensuring that the necessary licenses are obtained and held in respect of any software we supply to you for use in your business.

15.3 You give us the right to accept or execute any licensing agreement or contract on your behalf in respect of any product or service supplied to you by us where this is required for the normal operation or provision of the product or service. You agree to fully indemnify us from any liability arising from such acceptance or execution.

### 16. General

16.1 You will refrain from employing or seeking to employ any of our staff in any business in which you or your owners or directors have an interest for a period of 6 months following the termination of this agreement. You agree that should this clause be breached, a fee of 20% of the staff member's annual earnings or \$25,000, whichever is the greater, plus GST will become immediately payable to us.

16.2 Any prices we give you for our products and services are exclusive of freight, handling costs, GST or other Government levies unless specified otherwise.

16.3 You are responsible for ensuring that any of your employees or agents who order products or services from us has the authority to do so on your behalf.

16.4 Any quotation or other offer we provide to you does not give rise to a binding contract until you place an order with us which we subsequently accept.

16.5 We reserve the right to increase the price on any order you place where factors beyond our control, such as the exchange rate, affect the price we must pay our suppliers. We will tell you if this happens and you have the right to withdraw or change your order if we do this.

16.6 We may alter or withdraw any service we provide to you provided we give you one month's notice of our intention to do so.

16.7 You consent to receive communications from us electronically and agree that all agreements, contracts, notices, disclosures and other communications that we provide to you electronically satisfy any legal or other requirement that such communications be in writing. You agree to be bound by any agreement or contract made using electronic communications in terms of the Electronic Transactions Act 2002.

16.8 You will protect and not disclose any security access information, including usernames, passwords, PIN's or other similar information that is given to you by us for the purpose of using or accessing any service we provide to you, to any third party. You accept all liability in relation to the use of any such security access information. You agree to notify us immediately of any actual or suspected unauthorised use of the security access information relating to you.

### 17. Your Account with Us

Where we have granted you a credit facility you agree that:

17.1 You will pay all charges or fees for any product or service we provide to you as disclosed in any other agreement or contract we may have with you and that we may change those charges or fees at any time provided we give you one month's notice of our intention to do so.

17.2 You will not withhold payment as a means of dispute resolution and that regardless, any non-disputed amounts are paid in full by the due date. You must notify us promptly of any disputed amount and provide sufficient details to allow us to identify it.

17.3 You will make payment within the terms of any invoice we issue to you and if you do not pay your account in full by due date, we may charge a penalty at a rate of 2% per month calculated on a daily basis on the overdue portion of your account from the due date until payment is received in full.

17.4 You will, on demand, pay to us any amount we incur (including reasonable legal costs, collection costs, court costs and disbursements) in attempting to recover or recovering, payment of any overdue account.

17.5 You will notify us promptly should you or any of your company's directors (in respect of themselves personally, or as a director of any other company) suffer an Event of Default.

17.6 If you are subject to an Event of Default or you fail to comply with the terms of any agreement or contract with us:

17.6.1 We may suspend or terminate any agreement or contract with you and all amounts you owe us shall immediately become due and payable regardless of the due date;

17.6.2 You will not take any action or fail to take any action that may prejudice our rights in respect of any products in your possession that we hold a security interest in or have ownership of;

17.7 You will notify us promptly of any changes to your circumstances that would be likely to influence our decision to continue to offer you a credit facility.

17.8 If your account with us remains in arrears one month or longer, you agree that until your account is settled in full we may do any of the following without being in breach of this or any other agreement or contract:

17.8.1 Suspend any service we are already providing to you without notice;

17.8.2 Refuse to provide any further services to you;

17.8.3 Withhold the delivery of any products you have ordered