

TERMS OF TRADE, CREDIT APPLICATION AND SECURITY AGREEMENT

These terms (the Terms of Trade), as amended or replaced from time to time, govern the supply by **1Call Limited** (we and us) to the Purchaser (you) of:

- Goods including software and hardware (Goods, as defined more particularly in clause 16); and
- Services including installing Goods, establishing computer systems made up of a combination of Goods (Networks), and identifying and repairing faults (Services), whether for your own use or for lease by you (as Lessor) to one of your customers (an End User) (Lease).

Also, by these Terms of Trade you:

- Apply for credit; and
- Pursuant to the Personal Property Securities Act 1999, grant us a security interest in all Goods that we supply to you.

1. How to order Goods and Services

1.1 To order Goods and/or Services from us you need to be currently approved by us for credit purposes, unless we reach an alternative payment arrangement with you. We will advise you promptly if we approve you for credit purposes or withdraw our approval.

1.2 To place orders on a casual basis:

- (a) you (or the End User if you are Leasing) must discuss requirements including preferred delivery dates with us; and
- (b) you must place an order (an Order) with us.

1.3 We will advise you promptly of whether we accept your Order.

1.4 A restocking fee may be charged for items on orders that you have placed but then subsequently cancelled.

1.5 To receive Services from us regularly under a Service Level Agreement, you must;

- (a) discuss your requirements with us; and
- (b) enter into an agreement with us in the form of a Service Level Agreement.

2. Application of Terms of Trade

2.1 All Goods and Services that we supply to you (whether in relation to an Order, a Service Level Agreement or otherwise) are subject to these Terms of Trade. In addition, all Services that we supply under a Service Level Agreement are subject to the terms of that Service Level Agreement.

2.2 These Terms of Trade replace any previous versions of Terms or Agreements issued by us, in their entirety.

2.3 These Terms of Trade and any current Service Level Agreement prevail over any document issued by you or on your behalf, even if purported to be accepted by us, and your acceptance of any Goods or Services from us indicates acceptance of these Terms of Trade.

2.4 To the extent that there is any inconsistency between these Terms of Trade and any current Service Level Agreement, the Service Level Agreement will prevail.

3. Our commitment to you

In providing Goods and Services to you, we will endeavour to act at all times responsibly, bearing in mind your best interests.

4. Access to Facilities

To help us provide you with Goods and Services you must:

- (a) ensure that we have full access to any Goods we have supplied to you, and to your (or, if applicable, the End User's) computer system, computer equipment and backup facilities, as reasonably required;
- (b) ensure that you have any necessary authorizations for any computer software that you (or the End User), use on the computer system, equipment or facilities;
- (c) ensure that your representative (or, if applicable, the End User's representative) is on site at the same time as our representative; and
- (d) ensure that we have all the information, facilities and services that we can reasonably require to perform our obligations, and ensure that we receive help to ascertain the cause of any faults in any Goods, in your (or, if applicable, the End User's) computer system, or in any other goods or equipment.

5. Delivery

5.1 Whenever we accept an Order, we will endeavour to deliver the Goods to your premises (or, if applicable, the End User's premises) and to perform the Services by the time that you (or the End User) and we agree. However, we will not be liable for any failure to delivery all or any part of the Goods or Services, or for any delay in delivery.

5.2 You must ensure that delivery of Goods is not refused except where we have first agreed in writing to the refusal.

6. Prices

Our prices are:

- (a) For accepted Orders where we have provided a quotation for the relevant Goods and/or Services within the 7 days before the Order was placed, the quoted price plus GST and any other taxes; or
- (b) For Services under any Service Level Agreement the amounts set out in the Service Level Agreement,
- (c) For all other accepted Orders, our prevailing hourly rate (as displayed at www.1call.co.nz) at the date of supply, including for any travel to and from your (or any End User's) site, transport costs, Goods at our prevailing list price, plus GST and any other taxes.

(together the Prices)

7. Payment

7.1 Orders: Unless we agree otherwise in writing, you must pay us (in cleared and immediately available funds, without set-off, counterclaim, deduction or withholding, except as required by Law) the Prices of all Goods and Services in accordance with the following timetable (the Due Dates):

If you are a company, partnership, trust or incorporated society:

- (a) If we are establishing a Network for you:
 - the Price of the Goods within seven days of their delivery;
 - the Price of establishing the Network and any other Services by the 20th of the month following the date when the Goods begin functioning simultaneously for the number of users specified in our quotation (even if not every product supplied by a third party has been installed) (the Commissioning Date);
- (b) If we are providing other Goods that you intend to Lease to an End User, within 7 days of our invoice;
- (c) If we are providing other Goods for your own use, within 7 days of delivery; and
- (d) For all other Services under accepted Orders, and all other amounts that you owe us under this agreement, by the 20th of the month following the date of our invoice; and
- (e) For all amounts payable under a Service Level Agreement in accordance with the dates set out in the Service Level Agreement.

If you are an individual or sole trader:

- (f) If we are establishing a Network for you:
 - the Price of the Goods within 7 days of their delivery;
 - the Price of establishing the Network and any other Services by 7 days following the date when the Goods begin functioning simultaneously for the number of users specified in our quotation (even if not every product supplied by a third party has been installed) (the Commissioning Date);
- (g) If we are providing other Goods that you intend to Lease to an End User, within 7 days of our invoice;
- (h) If we are providing other Goods for your own use, within 7 days of delivery; and
- (i) For all other Services under accepted Orders, and all other amounts that you owe us under this agreement, by 7 days following the date of our invoice; and
- (j) For all amounts payable under a Service Level Agreement in accordance with the dates set out in the Service Level Agreement.

7.2 Failure to pay us by the Due Dates: If you do not pay us by the Due Dates (whether in relation to an Order or a Service Level Agreement) you will be in default, and we may:

- (a) charge you default interest of 2.5% per month calculated on a daily basis on the overdue amount, from the due date until the date when payment is made. The charging of default interest does not imply the granting of an extension of credit;
- (b) recover from you (as a debt owing) all costs incurred in attempting to obtain payment, including legal costs (on a solicitor and own client basis), debt collection costs and administrative charges;
- (c) as your irrevocably appointed agent for the purposes of this clause, enter any premises where we reasonably believe Goods are stored and remove them. We will not be responsible for, and you indemnify us against, any damage caused or loss or

liability incurred in entering the premises or removing Goods. We may resell the Goods and apply the proceeds to reduce the amount that you owe us; and

- (d) exercise any of our remedies for default under clause 12 or at law.

8. Information about you

8.1 You authorize us to:

- (a) collect and hold personal and credit information about you from any source we consider appropriate. We may use this information to determine your credit worthiness, credit history or credit capacity, for debt collection or any related purpose, or for providing you with information about our Goods and Services; and
- (b) disclose the personal and credit information to anyone else (including our related parties) for the purposes set out in clause 8.1(a).

8.2 You must notify us of any changes in circumstances that may affect the accuracy of any personal or credit information that we have collected about you under these Terms of Trade.

8.3 If you are an individual (i.e. a natural person), you may access and request correction of any personal or credit information that we have collected about you as an identifiable individual, subject to the restrictions in the Privacy Act 1993.

9. Risk and ownership of Goods

9.1 Risk of loss, deterioration or damage from any cause, of any Goods that we supply to you, passes to you on delivery of the Goods to you (or on delivery of the Goods to the End User, if we deliver them to an End User).

9.2 We retain ownership of the Goods until you have paid us all amounts that you owe us in relation to all Goods and Services that we have supplied to you. If any Goods are mixed or commingled (as defined in the Personal Property Securities Act 1999) (PPSA) with other goods before payment, we will own the resulting mixed or commingled goods as if they were Goods that we had supplied.

9.3 After delivery, but while ownership of Goods remains with us:

- (a) you must ensure that they are stored so they are clearly identifiable as belonging to us;
- (b) you may (unless we advise you otherwise, or you have breached these Terms of Trade) use, lease at market rates, or sell for full value, the Goods in the ordinary course of your business. If you lease or sell the Goods, you must hold the proceeds (separately and in identifiable form) in trust for us, and pay them into a bank account nominated by us if we request this;
- (c) except as provided in clause 9.3(b), you must not grant anyone any interest in or charge over the Goods; and
- (d) you must insure the Goods at your cost, naming us as loss payee, for full replacement cost against all risks. We may apply the proceeds of any insurance payment to reduce the amount that you owe us.

10. Personal Property Securities Act 1999

10.1 You acknowledge that:

- (a) these Terms of Trade are a security agreement for the purposes of section 36 of the PPSA;
- (b) we take a security interest in all Goods that we have previously supplied to you (if any) and all Goods that we will supply to you in the future, to secure (with equal priority) payment of all amounts that you owe us;
- (c) the security interest will continue until you have paid all amounts owing; and
- (d) you waive your right to receive a verification statement under section 148 of the PPSA

10.2 You;

- (a) will promptly sign any further documents, provide any further information, or do any other things that we reasonably require to perfect and maintain the perfection of our security interest (including by registering a financing statement or financing change statement);
- (b) indemnify (and if requested reimburse) us for all expenses that we incur in registering a financing statement or financing charge statement or releasing Goods charged by the statement; and
- (c) will give us 14 days' prior written notice of any change in your name, business practice or any other details, and use your best endeavours to ensure that any applicable financing change statement is registered disclosing your new details.

10.3 To the fullest extent permitted by law, you and we contract out of section 114(1)(a) of the PPSA, and out of your rights referred to in sections 107(2)(c), (d), (h), and (i) of the PPSA. If and for so long as we are not the secured party with priority over all other secured parties in respect of any particular Goods, you and we agree that section 109(1) of the PPSA does not apply to those particular Goods.

11. Warranties and liability

11.1 We warrant that if, due to our fault, any Network that we establish does not allow the Goods in that Network to function simultaneously during the 30 days immediately following the commissioning Date for the number of users specified in our quotation, and you notify (or, if applicable, the End User notifies) us of the fault, we will remedy the fault free of charge.

11.2 Where Goods are covered by a manufacturer's warranty we will endeavour to ensure that any faults in the Goods that are notified to us are attended to quickly by the manufacturer. However, to the extent that we are not reimbursed by the manufacturer, we will charge you for our Services in attending to the faults.

11.3 Subject to clauses 11.1 and 11.2, all warranties, representations and conditions relating to the Goods and Services, whether express or implied, whenever arising, and whether originating by statute, law, trade, custom or otherwise, are expressly excluded to the fullest extent permitted by law. In particular:

- (a) we do not warrant that the Goods will be error-free or that we will be able to correct all errors in the Goods, any Network, or your (or, if applicable, the End User's) computer system;
- (b) you acknowledge that the Goods and Services are acquired for the purposes of a business, and that the Consumer Guarantees Act 1993 will not apply; and
- (c) you will indemnify us and keep us indemnified against all costs (including legal costs on a client and own solicitor basis), expenses, damages, losses (including loss of profits, data or business opportunity) that we suffer or incur as a result of any claim by an End User, whether in tort (including negligence), breach of statutory duty, equity or otherwise.

11.4 If, despite the other provisions of these Terms of Trade, we are found to be liable to you, then our liability is limited to an amount equal to the price you paid for the particular Good or Service in respect of which the liability arises.

12. Default and termination

12.1 If we have reasonable grounds to believe that:

- (a) you are in default of these Terms of Trade;
 - (b) you have become insolvent or have ceased or threatened to cease to carry on all or substantially all of your business or operations;
 - (c) a receiver or manager has been appointed in respect of any part or the whole of the your assets or business;
 - (d) any resolution has been passed or proceedings have been commenced to wind you up; or
 - (e) you have entered into a formal proposal for compromise with creditors under the Companies Act 1993,
- we may:
- (f) not supply you with any more Goods or Services, or defer supplying you with them; and
 - (g) treat any Order or Service Level Agreement as having been cancelled or terminated by you; and enforce our security interest in the Goods.

12.2 If we withdraw our approval of you for credit purposes, we may treat any Service Level Agreement as having been cancelled or terminated by you.

12.3 Termination or cancellation of any Order or Service Level Agreement will not affect the rights, powers, remedies, obligations, duties and liabilities of either party which have accrued before termination or expiry.

13. Intellectual property

You acknowledge that we (or our supplier) are the sole owner of all intellectual property (including business know-how, ideas, methodologies, routines, systems and processes) relating to or arising, directly or indirectly, out of the Goods and Services that we supply to you, or developed or contributed to by us in relation to any information, fault, repair or documentation that we supply to you, or as a result of us performing Services or any other work for you.

14. Confidential information

14.1 Each party agrees to always keep the other party's Confidential Material confidential and not to:

- (a) use the Confidential Material for any purpose other than for the purpose for which it was supplied; or
- (b) copy or reproduce any of the Confidential Material in any way, except where disclosure is necessary to enable an End User to use Goods or Services under lease, or where the party that owns the Confidential Material has consented to disclosure.

14.2 On request, each party will ensure that any Confidential Material (including any copies of it) that it possesses or controls (and, where that party is a Lessor, that an End User possesses or controls) and that belongs to other party is returned to that other party.

15. Resolving Disputes

15.1 The Parties will use all reasonable endeavours to resolve any dispute between them. If the parties cannot resolve the dispute between themselves, they will refer the dispute to mediation, which will be conducted in Terms of Trade of the LEADR New Zealand Inc. standard mediation agreement.

15.2 Nothing in this clause will preclude either party from taking immediate steps to seek urgent equitable relief before an appropriate court.

16. General

16.1 Employees and contractors: During the term that we provide Goods and/or Services to you and for six months thereafter, you will not, whether directly, indirectly through an associated company, or otherwise, solicit for employment any person who we have employed or contracted. You and we agree that this restraint of trade is reasonable in all the circumstances. However, if a court of competent jurisdiction finds it to be unenforceable, you and we agree to accept any modification of the duration of the restraint concerned which the court sees fit to impose, or if it does not see fit, which may be required to make the restraint enforceable.

16.2 Entire agreement: These Terms of Trade, and any current Service Level Agreement, constitute the entire agreement between you and us in relation to their subject matter. They supersede all earlier negotiations, representations, warranties, proposals, communications, understandings and agreements.

16.3 Amendments: You may amend, replace or cancel these Terms of Trade or any current Service Level Agreement with our prior written agreement (but not otherwise). We may amend, replace or cancel these Terms of Trade or any current Service Level Agreement by giving you one month's written notice of the change, or by posting the change at www.1call.co.nz

16.4 Force majeure: We are not required to perform any obligation under these Terms of Trade or a Service Level Agreement if prevented from doing so by any event beyond our reasonable control. If we cannot fulfil our obligations under any Order or Service Level Agreement for more than 30 days because of this event, either you or we may immediately cancel that Order or Service level Agreement by written notice to the other party.

16.5 No waiver: Any exercise or failure to exercise any right or remedy available to us does not limit our rights to exercise that or any other remedy. A waiver of any of these Terms of Trade must be in writing and signed by one of our authorized officers.

16.6 Relationship: You and we are independent contractors. Nothing in these Terms of Trade or any Service Level Agreement should be interpreted as constituting you our agent, partner, contractor, officer or employee. You are not entitled to enter into any obligations on our behalf without our express written consent.

16.7 Notices: Notices under these Terms of Trade or a Service Level Agreement, or that are required by statute, law or regulation, must (unless otherwise provided) be in writing and delivered by hand, prepaid mail or facsimile to the principal business address of the person being notified. The notice will be deemed to have been received at the time when actually delivered if delivered by hand, upon confirmation of successful transmission if sent by facsimile, or 3 days after posting if sent by mail.

16.8 Assignment and subcontracting: You may assign or transfer your benefits or obligations under these Terms of Trade or any current Service Level Agreement with our prior written consent (but not otherwise). We may assign or subcontract our benefits or obligations (or both) under these Terms of Trade

16.9 Partial invalidity: If any part of these Terms of Trade or any Service Level Agreement or their application is or becomes invalid or unenforceable, the remainder will remain enforceable to the greatest extent permitted by law.

16.10 Express rights: Our exercise of any express right set out in these Terms of Trade is without prejudice to any other rights, powers or remedies available to us in contract, at law or in equity, including any rights, powers or remedies which would be available to us if the express right was not set out in these Terms of Trade.

16.11 Third parties: These Terms of Trade do not create any obligations enforceable by any third party, including any End User.

16.12 Law: These Terms of Trade and any current Service Level Agreement are governed by New Zealand law and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.

16.13 Definitions: In these Terms of Trade:

Confidential Material means:

- (a) all information and other material relating to our business, employees, Goods and Services, which we make available, or have previously made available to you; or
- (b) any report or material which we produce as a direct or indirect result of any work that we carry out for you, and anything that you derive from this information and material but excluding everything which;
- (c) is generally available to the public (but not because you or anyone you are responsible for has disclosed it or allowed it to be disclosed); or
- (d) you or a third party have independently developed or acquired, except where this was derived from information sourced from us which otherwise comes within this definition of Confidential Material.

Goods means all goods that we supply to you from time to time, provided that:

- (a) (but solely for the purpose of the application of the PPSA) where the goods supplied are your inventory, all references to Goods shall, in respect of those goods, be read as references to inventory while they are held as inventory; and
- (b) where the goods supplied are not or are no longer held as your inventory, all references to Goods shall, in respect of those goods, mean the goods described in any relevant order form, packing slip or invoice (or its equivalent, whatever called) prepared by us and relating to those goods, on the basis that each such order form, packing slip or invoice (or its equivalent) is deemed to be assented to by you, incorporated in, and form part of, these Terms of Trade, and (unless the context requires otherwise) includes all proceeds of such Goods and any product or mass which the Goods subsequently become part of.

Working Hours means the hours between 8.30 am and 5.30 pm on a normal working day.

Working Day means Monday to Friday, excluding New Zealand public holidays and observed regional anniversary holidays.

16.14 Construction

Headings: headings appear for convenience and do not affect the construction of these Terms of Trade;

Including: a reference to “including” or “includes” means without limitation;

Negative Obligations: a reference to a prohibition against you doing any thing includes a reference to you not permitting, suffering or causing that thing to be done;

Parties: a reference to a party to these Terms of Trade or any other document includes that party’s personal representatives/successors and permitted assigns;

Person: a reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporate.