

Device Solutions Limited

Terms and Conditions for Supply

1. Interpretation

1.1. In these Terms and Conditions for Supply ("**Terms**"):

"**Agreement**" means the Purchase Order and these Terms;

"**Business Day**" means any day other than a Saturday, Sunday or public holiday in Christchurch, New Zealand;

"**Customer**" means the person named in the Purchase Order;

"**Delivery Date**" means the date on which the Products are to be delivered to the Customer, as agreed by Device Solutions and the Customer in writing;

"**Device Solutions**" means Device Solutions Limited;

"**Intellectual Property**" means all present and future intellectual and industrial property rights conferred by law, including all patents, trade marks, service marks, trade names, inventions, trade secrets, copyright, moral rights, product names, rights in a design, know-how, confidential information and all or any other intellectual property rights whether or not registered and all other similar property, any application or right to apply for registration of any of those rights and all renewals and extensions of those rights;

"**Price**" means the purchase price for the Products as advised by Device Solutions to the Customer from time to time;

"**Product**" means the Device Solutions product described in the Purchase Order;

"**Purchase Order**" means an order for the Products issued by the Customer under clause 2.2;

"**Software**" means the software required for the operation of the Products;

"**Third Party Component**" means any component of the Products supplied by third parties, including the Software;

"**Warranty Period**" means a period of 12 months from the date of delivery of the Products to the Customer.

1.2. In the event of any conflict or inconsistency between these Terms and a Purchase Order, these Terms will prevail.

1.3. For the avoidance of doubt, these Terms apply to all Purchase Orders.

2. Scope and Term

2.1. Device Solutions will supply the Products, and the Customer will pay for the Products, on the terms of this Agreement.

2.2. Subject to clause 2.3, the Customer will purchase the Products by placing a purchase order with Device Solutions specifying:

- (a) the Customer's name and contact details;
- (b) the type and number of Products; and
- (c) the address of the Customer's premises ("**Site**").

2.3. A minimum order quantity of 100 Products applies for all custom Products, non-standard configurations and custom-programmed Products.

2.4. Device Solutions may, at its sole discretion, reject a Purchase Order.

2.5. Device Solutions will notify the Customer of its acceptance or rejection of a Purchase Order within 5 Business Days following receipt.

2.6. This Agreement will commence when the Purchase Order is accepted by Device Solutions and will continue in force until terminated in accordance with its provisions.

3. Delivery and Installation

3.1. Subject to clause 3.2, the Products will be delivered to the Customer at the Site by Device Solutions or its nominated carrier.

3.2. Device Solutions will use reasonable endeavours to deliver the Products on the Delivery Date.

3.3. The Customer will be responsible for the installation and provisioning of the Products.

3.4. The Customer will indemnify Device Solutions against all loss, liability, costs or expenses incurred by Device Solutions as a result of failure or refusal of the Customer to take delivery of the Products on or after the Delivery Date.

3.5. The Customer's liability under clause 3.4 will include liability for any costs incurred by Device Solutions or levied by any supplier of Third Party Components in relation to storage, transportation or insurance for the Products or any components of the Products.

4. Risk and Ownership

4.1. Risk in the Products passes to the Customer on delivery.

4.2. Ownership of the Products does not pass to the Customer until the Customer has paid all amounts owing under this Agreement in full.

4.3. While ownership of the Products remains with Device Solutions, the Customer must:

- (a) not sell, lease, create a security interest in or permit any lien over, mortgage or part with possession of the Products or any interest in the Products; and
- (b) keep insured with a reputable insurance company the Products against risk of loss or damage by hazards normally insured against.

4.4. To the extent that the Products constitute personal property for the purposes of the Personal Property Securities Act 1999 ("**PPSA**"):

- (a) the Customer acknowledges that Device Solutions has a security interest under the PPSA in the Products as security for payment of all amounts owing under this Agreement;
- (b) the Customer must notify Device Solutions of any change in name not less than 7 days before the change takes effect; and
- (c) sections 114(1)(a), 117(1)(c), 133 and 134 of the PPSA will not apply to the enforcement by Device Solutions of the security interest set out in this clause, and the Customer waives its rights under sections 116, 119, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA in respect of such enforcement.

4.5. The Customer must immediately notify Device Solutions if a receiver, liquidator or administrator is about to be appointed in respect of the Customer. Any such receivership, liquidation or administration does not

discharge or otherwise affect the Customer's obligations under the security interest created by this Agreement.

4.6 Pricing and Payment

5.1 The Customer will pay to Device Solutions the Price in accordance with clause 5.4. The Customer's obligation to pay the Price will not be affected by any defect in, or damage to, the Products.

4.7 The Price will be increased by the amount of any GST, and other taxes and duties which may be applicable and any additional amounts for which Device Solutions is entitled to payment under this Agreement, except to the extent that such amounts are expressly included in the Price.

4.8 Device Solutions will invoice the Customer for the Price on the date on which the Products are dispatched for delivery to the Customer.

4.9 The Customer will pay Device Solutions for each invoice in accordance with the payment terms set out in that invoice. All payments will be made in cleared funds without deduction or set-off.

4.10 Device Solutions may apply any payments received in reduction of any outstanding interest or other costs relating to overdue payments under clause 5.6, and thereafter in reduction of all other invoiced amounts.

4.11 Without prejudice to any other rights or remedies it may have, where any amount payable under this Agreement is overdue, Device Solutions may:

- (a) charge interest, from the due date until the date of actual payment in full, at the rate of 2% per annum above the base overdraft rate charged by Device Solutions' principal bankers from time to time; and
- (b) until payment is received in full by Device Solutions, suspend the supply of the Products or any undelivered components of the Products,

and the Customer will be liable on default for all legal costs and agency fees incurred in recovery of all overdue amounts.

6. Limited Warranty

6.1 Device Solutions warrants that, during the Warranty Period, each Product (excluding any Third Party Components) will be materially free from defects in materials and workmanship.

6.2 As the Customer's sole remedy for breach of the Limited Warranty and subject to the provisions of this clause 7, Device Solutions will at its election, either repair or replace the relevant Product.

6.3 The Customer will be responsible for delivering the Product to Device Solutions for repair or replacement, and for all costs and expenses associated with such delivery. The Customer will also be responsible for all costs and expenses in removing the Product from its systems for the purposes of delivery and installing the Product in its systems following its repair or replacement by Device Solutions.

6.4 Where following inspection or testing by Device Solutions the Product is found not to breach the Limited Warranty, the Customer will reimburse Device Solutions for all costs and expenses incurred by Device Solutions in carrying out such inspection or testing.

6.5 The Limited Warranty is given subject to the following:

- (a) Device Solutions is not liable for any defect in the Product caused by fair wear and tear, abnormal or unsuitable conditions of use, use of the Product with

any other product not approved by Device Solutions, failure to use the Product in accordance with any user documentation provided by Device Solutions, or any neglect or default of the Customer or any third party.

(b) Device Solutions is not liable for any breach of the Limited Warranty:

- i. unless it is notified in writing during the Warranty Period, and provided Device Solutions has been given reasonable opportunity to inspect the Product;
- ii. if the total Price for the Product has not been paid; or
- iii. if the Product has been altered by any person without Device Solutions' prior written consent.

6.6 The Limited Warranty does not extend to any Third Party Components, in respect of which Customer will only be entitled to the benefit of any warranties given to Device Solutions by the suppliers of such Third Party Components. Device Solutions will use reasonable endeavors to assign to the Customer any warranties received from such suppliers and will give reasonable assistance (at the Customer's cost) to enforce such warranties on the Customer's behalf.

6.7 The Customer acknowledges that:

- (a) the Products are supplied for business purposes and the Consumer Guarantees Act 1993 does not apply to such supply; and
- (b) all warranties implied by statute, common law or otherwise are hereby excluded.

7 Software

7.1 The Customer acknowledges and agrees that:

- (a) the Software is supplied by third parties and accordingly constitutes a Third Party Component;
- (b) a licence for the Software is not supplied with the Products, and the Customer will have to obtain such a licence from the relevant third party supplier;
- (c) all Software support is provided by third parties.

8 Intellectual Property

8.1 The Customer acknowledges and agrees that Device Solutions and its licensors are the owners of all Intellectual Property rights and other proprietary rights in the Products (excluding the Software).

8.2 The Customer agrees that it will not, in any way, engage in any of the following activities:

- (a) reverse engineering, decompiling, separating, operationally segregating or otherwise unbundling all or any part of a Product;
- (b) commercially exploiting, reselling or licensing a Product as a "standalone" product.

9 Confidentiality

9.1 Each party ("Recipient") will keep confidential all information obtained from the other which is marked confidential or is by its nature clearly confidential and, except as permitted by clauses 9.3 and 9.4, will not disclose the same to any third party without the written consent of the other party. For the purposes of this clause, the terms of this Agreement (including the Price) are confidential information.

- 9.2 The Recipient may disclose confidential information to those of its employees, agents and contractors who are directly involved in the Recipient's performance under this Agreement and which owe obligations of confidentiality to the Recipient.
- 9.3 The obligations of confidentiality set out in clause 9.2 will not apply to information that:
- (c) the Recipient can show was independently obtained from a third party having the right to disclose it;
 - (d) enters the public domain through no fault of the Recipient or any other person to whom it discloses the information; or
 - (e) the Recipient is obliged by law to disclose, provided that it has first advised the other party of this obligation, has allowed the other party reasonable time to avoid the disclosure having to be made, and has given the other party such assistance (at the other party's cost) as the other party reasonably requests in doing this.

10 Limitation of Liability

- 10.1 Device Solutions' total liability under this Agreement will not exceed in aggregate the lesser of the actual loss or damage suffered by the Customer or the total amount paid by the Customer for the Products.
- 10.2 Device Solutions will not be liable for:
- (a) any indirect, special, incidental or consequential damage or loss suffered by the Customer (including loss of profit or earnings) in connection with this Agreement; or
 - (b) any delay in delivery of the Products.
- 10.3 The limitations set out in this clause 10 will not apply in respect of loss or damages suffered by either party as a result of any willful breach of this Agreement by the other party.

11 Termination

- 11.1 Either party may immediately terminate this Agreement by notice in writing to the other party at any time where the other party:
- (a) breaches any obligation under this Agreement that is capable of remedy and fails to remedy such breach within 10 Business Days after notice from the first party requiring the breach to be remedied;
 - (b) breaches any obligation under this Agreement that is not capable of remedy; or
 - (c) becomes insolvent or goes into liquidation or bankruptcy or has a receiver or statutory manager appointed over any of its assets or ceases to carry on business or makes any composition or arrangement with its creditors.
- 11.2 Clauses 9, 10, 11.3 and 12 will survive termination of this Agreement.
- 11.3 Termination of this Agreement will be without prejudice to the rights and obligations of the parties prior to termination. On termination of this Agreement:
- (a) the Customer will pay to Device Solutions all sums which have been invoiced and are outstanding; and
 - (b) the Customer will not be entitled to a refund of any pre-paid portion of the Price.

12 Dispute Resolution

- 12.1 If a dispute arises under this Agreement, neither party may commence any court proceedings relating to the dispute unless it has complied with the following provisions of this clause 12, except where the party seeks urgent interlocutory relief.
- 12.2 The party claiming a dispute (the "**Dispute**") has arisen under this Agreement must give written notice to the other party specifying the nature of the Dispute. On receipt of that notice by the other party, both parties must endeavour in good faith to resolve the Dispute first through their respective representatives and secondly through informal dispute resolution techniques such as mediation, expert evaluation or determination or similar techniques agreed by them.
- 12.3 If the Dispute is not resolved within 15 Business Days of the notice being given pursuant to clause 12.2 (or within such further period agreed in writing by the parties), either party may, by giving notice in writing to the other party, refer the Dispute to mediation. The mediator will be appointed jointly by the parties or, where the parties cannot agree on a mediator within 5 Business Days of a party referring the Dispute to mediation, appointed by the Chair of LEADR New Zealand Incorporated (or the Chair's nominee). The costs and expenses of the mediator will be shared by the parties equally.

13 General

- 13.1 Each notice or other communication under this Agreement is to be made by email, personal delivery or by post to the addressee at the relevant email address or postal address, and is to be marked for the attention of the person or office holder (if any) from time to time designated for the purpose by the addressee to the other party.
- 13.2 No communication is to be effective until received. A communication will, however, be deemed to be received by the addressee:
- (a) in the case of an email, on the day on which it is sent to the correct email address or, if sent on a non-Business Day or after 5pm, on the next Business Day;
 - (b) in the case of personal delivery, when delivered; and
 - (c) in the case of a letter, 2 Business Days after posting or, in the case of an overseas postal address, 10 Business Days after posting.
- 13.3 Device Solutions will not be liable to the Customer for any breach or failure to perform any of its obligations under this Agreement where such breach is caused by any cause beyond its reasonable control (**force majeure event**). Device Solutions will use all reasonable endeavours to mitigate the force majeure event. If the force majeure event continues for more than 90 days, either party may terminate this Agreement immediately.
- 13.4 No amendment to this Agreement will be effective unless it is in writing and signed by both parties.
- 13.5 The Customer may not assign its rights or obligations under this Agreement to any other person without Device Solutions' prior written consent.
- 13.6 This Agreement constitutes the entire understanding and agreement of the parties relating to the subject matter of this Agreement and supersedes and extinguishes all prior agreements and understandings between the parties relating to such matter.
- 13.7 This Agreement is subject to the laws of New Zealand and the parties submit to the exclusive jurisdiction of the New Zealand Courts.

