

TURNSTONE LIMITED

TERMS AND CONDITIONS

Turnstone agrees to provide the Goods and Services referred to in the Business Agreement attached, to the Customer on and subject to the terms and conditions set out below and the terms and conditions contained in the Business Agreement attached (together this **Agreement**).

1.0 DEFINITIONS

Definitions contained in the Business Agreement attached apply to these terms and conditions.

"Confidential information" means any information, whether this information is relevant or not, which is disclosed by Turnstone to the Customer or of which the Customer becomes aware of directly or indirectly relating to the Goods and Services.

"Customised Software" means software developed specifically for the Customer.

"Working Hours" means 8.00am to 5.30pm Monday to Friday inclusive, excluding public holidays.

"Use" means any software developed or supplied by Turnstone but does not include Customised Software

2.0 ORDERS

2.1 Every request by the Customer for Goods and Services shall be made by the Customer in writing on a Service Schedule or Job Sheet, which is subject to acceptance by Turnstone. Turnstone will notify the Customer in writing whether it approves the Customer's request.

3.0 TERM

3.1 Unless Turnstone otherwise agrees in writing the Customer is obliged to take such Goods and Services set out in a Service Schedule or Job Sheet for a minimum period of 36 months (**Initial Term**). Following the expiry of the Initial Term, Goods and Services will continue to be provided by Turnstone to the Customer until either party provides 30 days prior written notification indicating it wishes to terminate the provision of the relevant Goods and Services pursuant to the relevant Service Schedule or Job Sheet. For the avoidance of doubt, this clause does not affect the provisions that relate to a breach of these terms and conditions.

4.0 THE CUSTOMER'S RESPONSIBILITIES TO TURNSTONE

4.1 Whenever Turnstone provides Goods and Services to the Customer, it is the Customer's responsibility to ensure that:

- (a) Any information the Customer has given to Turnstone is correct and complete;
- (b) Any directions given regarding the use of the Goods and Services are followed;
- (c) The Goods and Services are used for lawful purposes; and
- (d) Any user of the Goods and Services complies with this Agreement.

5.0 PAYMENT OBLIGATIONS

5.1 The Customer agrees to pay the charges specified in the relevant Service Schedule or Job Sheet as invoiced. In particular the Customer agrees as follows:

- (a) To pay for the Goods and Services regardless of who uses them.
- (b) Should the Customer dispute any of the charges appearing on an invoice the Customer is required to contact Turnstone before the due date of payment. The Customer will not be required to pay the queried part of the invoice while Turnstone investigates this matter. If Turnstone agrees that there has been a mistake, Turnstone will adjust the Customer's next invoice or issue a credit note. If the due date for payment has already passed then the Customer will be required to pay any outstanding amount immediately; and
- (c) If the Customer has not paid an invoice by the due date for payment, Turnstone may in its sole discretion charge a fee equivalent to 10% of the unpaid portion of the relevant invoice. The Customer agrees to pay such fee and Turnstone's reasonable costs incurred in recovering outstanding amounts from the Customer, including debt collection fees and legal fees.

5.2 Unless otherwise agreed in writing, Turnstone reserves the right to alter the pricing structure for any Goods and Services. Turnstone will inform the Customer of any proposed alteration to prices at the earliest time before the alteration is due to occur.

6.0 GOODS AND SERVICES

6.1 Risk and Insurance

- (a) Risk passes to the Customer at the time Turnstone notifies the Customer in writing that the Goods are in Turnstone's possession. The Customer assumes all risk in respect of the Goods during and after delivery from Turnstone to the Customer.
- (b) While any Goods and any of the Customer's own equipment or software is held on the Customer's behalf by Turnstone, Turnstone holds such Goods at the Customer's risk and the Customer must carry adequate insurance to cover any loss or damage to the Goods and to any of the Customer's own equipment or software during such time regardless of whether the Customer has paid for the Goods.
- (c) Turnstone shall use all reasonable endeavours to meet any agreed delivery date. Turnstone shall not be liable for any failure to deliver or complete, or any delay in delivery or completion of the Goods and Services where such a failure or delay is caused by events beyond Turnstone's reasonable control. The Customer may not cancel any Service Schedule or Job Sheet for late delivery or late completion of the Goods and Services.
- (d) Any estimated dates or times for delivery or completion of the Goods and Services are given on the understanding that all necessary preliminary work and facilities are ready and available for Turnstone's use as and when it requires them. The Customer must ensure satisfactory and continuous means of access to the Customer's property is available to Turnstone at all times together with adequate protection for all Goods and Services which are delivered to the Customer.

6.2 Permission

If the consent of the Customer's landlord is required for the installation of any Goods and Services, the Customer will obtain this consent in writing before installation occurs.

6.3 Payment by a Third Party for Goods and Services

If the Customer receives payment from a third party for any Goods and Services provided by Turnstone, the Customer agrees that this payment belongs to Turnstone and that the Customer is holding any sum received in Trust for Turnstone. The Customer agrees that it will inform Turnstone that any such payment has been received and ensure payment to Turnstone is effected immediately.

6.4 Recovery of Goods

The Customer agrees that failure to pay for any Goods and Services provided by Turnstone will entitle Turnstone, at any time, to recover and retake possession of the Goods and Services and to exercise its rights as owner and/or unpaid seller. The Customer irrevocably authorises and licenses Turnstone and its servants or agents to enter any land, building or premises occupied by the Customer, at any time, where the Goods and Services are installed to inspect, search for, remove and repossess the Goods and Services. The Customer hereby irrevocably indemnifies Turnstone, its agents and representatives for any liability arising from any act of trespass committed or damage caused by such entry. Turnstone shall not be liable for costs, damages or expenses or any other losses whatsoever incurred by the Customer or a third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever.

6.5 The Customers Responsibilities in Relation to Goods and Services

The Customer will be responsible for any loss, damage and deterioration of the Goods and Services provided by Turnstone due to any cause whatsoever. For the avoidance of doubt, this clause in no way affects the Customer's insurance obligations as outlined in clause 6.1.

7.0 SECURITY

7.1 The Customer agrees that property and ownership in the Goods, whether in their original form or incorporated in, or attached to other items of equipment, goods or otherwise shall not pass to the Customer, but will remain with Turnstone until Turnstone receives payment in full for the Goods (including cost of delivery) and all other amounts that the Customer may owe Turnstone for any reason whatsoever.

7.2 The Customer grants to Turnstone a security interest in all present and after acquired Goods and their proceeds to secure all monies owing to Turnstone now and in the future and any costs and expenses referred to in paragraph 5 above, including without limitation all present and after-acquired Goods supplied or delivered by Turnstone described in any Service Schedule or Job Sheet, contract or documentation (electronic or otherwise) incorporated in any contract by reference or otherwise, invoice, statement or remittance advice from Turnstone.

7.3 At the request of Turnstone, the Customer agrees to do all acts necessary and provide all information required by Turnstone to perfect any security interest over the Goods or its proceeds, and the Customer further agrees to advise Turnstone immediately in writing of any changes to any information supplied for the purposes of the Personal Property Securities Act 1999 (**Act**).

7.4 Turnstone may, at any time, register its security interest over the Goods on the Personal Property Securities Register (**PPSA**). The Customer expressly waives all its rights to receive a copy of any verification statement or financing statement or any other notice which can be waived in accordance with PPSA including without limitation its rights under sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125, 126, 127, 129, 131, 132, 133 and 134 of the Act.

7.5 The Customer shall hold the Goods in trust as fiduciary bailee for Turnstone and keep them in a manner that will enable Turnstone to identify them and cross-reference them to particular invoices issued by Turnstone. Where the Goods are mixed or incorporated with other property so as to be part of, or a constituent of any new Goods, title to these new Goods shall be deemed to be assigned to Turnstone as security for the full satisfaction by the Customer of any amount owing to Turnstone.

7.6 The Customer including its principals and directors (if any), consent to and authorise Turnstone to search the Property Securities Register and any other registries and to make such enquiries as it deems necessary.

7.7 The Customer agrees and acknowledges that this contract constitutes a "security agreement" for the purposes of the Act.

8.0 SOFTWARE RELATED SERVICES

8.1 Turnstone will provide the Customer with a non-exclusive, non transferable license to use the Customised Software on the basis that:

- (a) the Customer will use the software supplied by Turnstone in accordance with the documentation provided by Turnstone and only for the number of uses permitted and will inform Turnstone should the Customer require any additional licenses;
- (b) the Customer will not copy Customised Software and will utilise the back up copy unless the original Customised Software is corrupted or loss occurs;
- (c) the Customer is not entitled to resell or transfer any Customised Software;
- (d) the Customer will not reverse engineer, disassemble, decompile, modify, adapt or otherwise attempt to discover the source code of any Customised Software;
- (e) the Customer is not entitled to assign, rent, lease or lend any Customised Software without the prior written consent of Turnstone;

(f) the Customer will return all copies of any Customised Software or destroy copies of any Customised Software should the Customer be required to do so for either not complying with these terms and conditions or due to termination occurring;

(g) Any Customised Software labelled as an upgrade replaces and/or supplements and disable the original software provided by Turnstone that formed the basis of the upgrade. Any upgraded software is subject to these terms and conditions; and

(h) In conjunction with section 8.1(a) the Customer acknowledges that all title in the Customised Software (including but not limited to any images, animations, photographs, video, music, text, modules and applets) and any accompanying materials and copies accessed through this material, is and shall remain the property of Turnstone.

9.0 INTELLECTUAL PROPERTY RIGHTS

9.1 In relation to the provision of the Goods and Services, the Customer agrees to the following:

(a) All and any right, title and interest and all intellectual property rights (including without limitation copyright) in the Goods and Services and Turnstone's Confidential Information is, will be and will remain the property of Turnstone or its licensors or suppliers. To the extent that the Copyright Act 1994 does not vest copyright in the Goods and Services (where not already owned by a third party) the Customer hereby assigns to Turnstone all right, title and interest in such Goods and Services;

(b) The Customer agrees not to challenge or attack the validity of, nor challenge the rights of Turnstone in relation to the intellectual property referred to in clause 9.1(a) as being the property of Turnstone; and

(c) The Customer will not supply any property or introduce any information for use by Turnstone in relation to the provision by Turnstone of Goods and Services that would breach confidentiality or infringe the intellectual property rights of a third party. The Customer agrees to indemnify and hold Turnstone harmless against all losses, claims or any expenses suffered by Turnstone as a result of any breaches of this clause 9.1(c).

10.0 CONFIDENTIAL INFORMATION

10.1 Each party will:

- (a) Ensure that all Confidential information, including but not limited to plans, reports, opinions, projections and network recommendations contained in any document or electronic storage system which includes Confidential Information is kept strictly confidential and neither party will use the contents in any way other than for the purposes for which the information was disclosed;
- (b) Not give Confidential Information to, or allow Confidential Information to be received by, any person who is under a duty to communicate this information to another person; and
- (c) Not use Confidential Information for any purposes other than for which it was provided. If uncertain the Customer must obtain permission from Turnstone.

10.2 Each party agrees to provide the other party on demand, all Confidential Information in whatever form (including all copies) that is in the former party's control.

10.3 Each Party shall take all reasonable care to ensure that all materials in its possession that contain Confidential Information is kept secure.

11.0 USE OF INFORMATION

11.1 (a) The Customer authorises Turnstone and its agents to collect information about the Customer to be held at Turnstone's head office. The Customer agrees that this information can be used for statistical analysis, research, enforcement and Turnstone's marketing purposes. The Customer authorises Turnstone and its agents to seek, supply and disclose information in relation to your private credit worthiness;

(b) Turnstone recognises that under the Privacy Act 1993 the Customer can request and require correction of its personal information. Any such request must be written and Turnstone reserves the right to charge a fee for any reasonable costs incurred in responding to the Customers requests.

12.0 LIMITATION OF LIABILITY

12.1 Where the Customer acquires the Goods and Services for the purposes of a business, the provisions of the Consumer Guarantees Act 1993 shall be excluded. Except for such guarantees which can not be excluded by virtue of the Consumer Guarantees Act 1993, all warranties, descriptions, representations or conditions where implied by law, trade, custom or otherwise including as to fitness, suitability or otherwise are expressly excluded to the fullest extent permitted by law. The warranties and guarantees set out in the Sale of Goods Act 1908 do not apply and are excluded from this Agreement.

12.2 The Customer may be required to sign an installation certificate when Goods and Services are installed by Turnstone that indicates that the installation is complete.

12.3 Except to the extent prohibited by statute, Turnstone shall not be liable for any loss or damage of any kind whatsoever suffered by the Customer, arising directly or indirectly from either the supply of Goods and Services or otherwise or as a consequence of the actions or omissions of any person (including consequential loss) whether in contract or tort (including negligence) or otherwise.

12.4 Where Turnstone is found to be liable, the liability of Turnstone, whether in contract or in tort, for any loss or damage arising directly or indirectly from the Goods and Services is limited at Turnstone's discretion to replacement or repair of such Goods or the re-performance of the Services (as applicable) or damages not exceeding the invoiced value of such Goods or Services.

12.5 The Customer indemnifies Turnstone against all and any costs (including legal costs incurred on a solicitor and own client basis) expenses, losses, damages or claims by any persons whatsoever arising in any way as a result of the provision or use of Goods and Services, any incorrect information supplied by the Customer or any failure of the Customer to comply with these terms and conditions.

13.0 GOVERNING LAW JURISDICTION

These terms and conditions are governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdictions of the Courts of New Zealand. The Customer agrees that if any part of these terms and conditions is found to be void and unenforceable, it will not affect the validity of the balance of these terms and conditions.

14.0 TERMINATION

14.1 Without prejudice to any other rights, Turnstone reserves the right to:

- (a) Terminate any Goods and Services provided to the Customer immediately, if the Customer has failed to comply with these terms and conditions or the Business Agreement; or
- (b) Stop providing Goods and Services to the Customer if the Customer fails to meet the Customer's obligations for payment as set out in these terms and conditions or the Business Agreement.
- (c) Terminate this Agreement if the Customer being a Company goes into liquidation either compulsorily or voluntarily (except for the purposes of reconstruction or amalgamation) or if a receiver is appointed in respect of the whole or any part of its assets.
- (d) Terminate this Agreement if the Customer being an individual is adjudicated bankrupt or commits an act of bankruptcy.

15.0 FORCE MAJEURE

Turnstone will not be liable for any failure or omission to provide any Goods and Services due to any cause reasonable outside the control of Turnstone.