

## KISS IT LIMITED TERMS AND CONDITIONS OF SALE

**The terms and conditions of sale set out below shall apply to the sale of all products and services supplied by Kiss IT Limited (called "Kiss IT"). All parties dealing with Kiss IT shall be deemed to have knowledge of these terms and conditions and the placement of an order or the logging of a labour job with the Help Desk of Kiss IT is deemed acceptance of these terms and conditions.**

### 1. ORDERS

In all cases where a Buyer places an order with Kiss IT for the supply of Goods or Services which either contains no terms or conditions or which contain terms and conditions identical to these General Terms and Conditions, such written order shall constitute an offer by the Buyer to be supplied Goods or Services in accordance with these General Terms and Conditions. In any case where an order which is placed by a Buyer contains terms and conditions which are inconsistent with these General Terms and Conditions such written order shall amount to an offer to be supplied Goods or Services which is incapable of acceptance by Kiss IT. Any subsequent delivery of ordered Goods or Services to the Buyer shall constitute a counteroffer to supply Goods or Services in accordance with these General Terms and Conditions which shall be deemed to be accepted on acceptance of the delivered Goods or Services by the Buyer.

### 2. TERMS OF TRADE

All customers not having an account with Kiss IT or not having previously made credit arrangements with Kiss IT shall pay for the Goods and Services intended to be supplied before they are delivered or supplied to the Buyer by Kiss IT. Any arrangements for credit shall be made at the sole and absolute discretion of Kiss IT. Those customers desiring to open a credit account shall provide such information as may be required by Kiss IT from time to time and any approval for the opening of a credit account will include a credit limit.

### 3. TERMS OF PAYMENT CREDIT ACCOUNTS

- 3.1 Unless otherwise agreed to in writing the full amount charged for all Goods and Services supplied by Kiss IT shall be paid by the Buyer within 7 days of delivery or supply of the Goods or Services, whichever event shall first occur. If the Buyer fails to comply with Kiss IT's Terms and Conditions of payment, Kiss IT may in its own discretion forthwith stop any further supply of Goods and Services to the Buyer even where there is an existing order uncompleted for the supply of Goods and Services to the Buyer. Where there is failure to make prompt payment all other monies due by the Buyer to Kiss IT, even if time for payment has not yet fallen due, shall immediately become due and payable by the Buyer to Kiss IT without the necessity of making demand for payment. So long as there are monies outstanding by a Buyer to Kiss IT all future orders accepted for the supply of Goods and Services by Kiss IT shall be accepted only on a cash basis. Kiss IT may at its sole and absolute discretion charge interest at the rate of 2% per month on all payments due by a Buyer, which are in arrears from the date that the payment fell due.
- 3.2 If payment is not received after 3 (three) written demands the buyer accepts that any collection costs incurred will be fully recoverable by Kiss IT from the buyer.
- 3.3 Payment of all monies due by a Buyer to Kiss IT shall be made without the right of set-off deduction whether under statute, in equity or howsoever arising, unless the buyer is a Consumer for the purposes of the Consumer Guarantees Act 1993.

### 4. DEFAULT

- 4.1 Without prejudice to its other remedies, Kiss IT shall be entitled to cancel this and any other contract for supply with the Buyer in the following circumstances:
- 4.1.1 If the Buyer becomes insolvent or is adjudicated bankrupt; or
- 4.1.2 If a receiver is appointed in respect of the assets of the Buyer; or
- 4.1.3 If the Buyer no longer carries on business or threatens to cease carrying on business; or
- 4.1.4 If an arrangement with the Buyer's creditors is made or likely to be made in the opinion of Kiss IT; or
- 4.1.5 If the ownership or effective control of the Buyer is transferred, sold, merged, assigned or otherwise altered or the nature of the Buyer's business is materially altered.
- 4.2 The Buyer shall pay all costs incurred by Kiss IT, including costs on a solicitor-client basis and debt collection costs incurred in the recovery or attempted recovery of outstanding monies and the enforcement of these Terms and Conditions of Sale.
- 4.3 Payments made by the Buyer shall be applied by Kiss IT first in repayment of interest accrued to the account, satisfaction of any liquidated damages payable by the Buyer and all costs incurred by the Buyer and payable pursuant to these Terms and Conditions of Sale. The balance of any payments made shall then be applied by Kiss IT in reduction of any amounts due by the Buyer pursuant to these Terms and Conditions of Sale.
- 4.4 If default in payment to Kiss IT continues for longer than 90 days then Kiss IT may after seven days' notice has been given to the Buyer, sell such items and apply the sale proceeds in reduction of the amount due and all costs described above and pay the balance, if any, to the Buyer.
- 4.5 All overdue amounts will attract interest at a rate of 2.5% per calendar month compounding.

### 5. DELIVERY

- 5.1 Kiss IT shall not be liable for any loss or damage to the goods however occasioned even though such loss or damage may be caused by Kiss IT's negligence or other default PROVIDED THAT this clause shall not prevent a Buyer who is a Consumer from exercising any remedies that Buyer may have under the Consumer Guarantees Act 1993.
- 5.2 Dates given for shipment or delivery are stated in good faith but are not to be treated as a condition of the sale. If delivery of the goods is delayed for any reason whatsoever, Kiss IT shall not be responsible or liable in any way to the Buyer or any other party for loss sustained due to such delay.
- 5.3 Where the Buyer does not take delivery of the goods by the delivery date specified or such later date as the parties agree, the Buyer shall pay reasonable storage costs until such time as the Buyer accepts the goods, such costs to be determined by Kiss IT, and Kiss IT shall be entitled to invoice the Buyer in accordance with clause 3.
- 5.4 Delivery by Kiss IT to a carrier shall be deemed to be delivery to the Buyer.
- 5.5 Kiss IT shall be entitled to cancel or suspend delivery of the goods in the event of any delay or non-performance due directly or indirectly to wars, strikes, lock-outs, delays or defaults of manufacturers or suppliers, act of God, or any other cause (whether similar or dissimilar) beyond the reasonable control of Kiss IT. The Buyer shall have no claims whatsoever against Kiss IT in consequence of any such cancellation or suspension.

### 6. PRICING

- 6.1 All prices of Kiss IT's goods are subject to change without notice. Prices set out in our Price Lists are F.O.B ex Tauranga Store. Freight and Insurance costs will be charged to the Buyer. Prices listed in a letter of offer to a Buyer will be qualified to the extent that such offer shall be valid for a period of 7

days from the date of the letter and thereafter the offer shall terminate and be of no further effect and the price will also be subject to any currency exchange rate fluctuation.

6.2 If GST or other taxes are payable on goods supplied or on any amount payable under clause 4, the Buyer shall pay such tax.

## 7. TITLE

7.1 Notwithstanding that ownership in the goods may not have passed to the Buyer risk in the goods shall pass to the Buyer when the goods are delivered to the Buyer or a carrier or into the custody of the party acting on the Buyers behalf. The Buyer shall be obliged to insure the goods from the time of delivery to the Buyer and pending payment in full insure the goods in the name of Kiss IT and the Buyer for their respective interest.

7.2 Notwithstanding any period of credit, legal and beneficial ownership of any and all goods shall remain with Kiss IT until payment in full is made for them and for all other goods supplied by Kiss IT to the Buyer.

7.3 If payment is overdue in whole or in part in respect of any of the goods supplied by Kiss IT, Kiss IT may (without prejudice to any of its other rights) recover and/or re-sell the goods or the mixed goods referred to in clause 7.6 or any of them and may enter upon the Buyers premises or any other place where the goods and/or the mixed goods are stored by its servants or agents for that purpose (and the Buyer grants to Kiss IT an irrevocable right and authority to recover, re-enter and re-sell) provided that Kiss IT may only recover and re-sell for its own account sufficient of the goods and/or the mixed goods to satisfy all unpaid liability in respect of the goods and the costs of resale. If any excess is recovered by Kiss IT, it shall not be liable in damages but shall account for the excess to the Buyer.

7.4 Until payment is made in full by the Buyer for the goods, the Buyer holds the goods as bailee for Kiss IT and the Buyer will store the goods in such a manner that they are clearly identifiable as the property of Kiss IT and will keep separate records in respect of the goods.

7.5 If the goods are sold or otherwise disposed of by the Buyer prior to payment in full, the Buyer will have been deemed to have done so as agent for Kiss IT and the proceeds of such sale will be the property of Kiss IT. The Buyer will hold the proceeds of such sale on trust, on account for Kiss IT and keep them in a separate fund which does not have a debit balance prior to such deposit, so that the proceeds are identifiable and traceable.

7.6 If any of the goods are mixed or incorporated in other goods (the mixed goods) before payment, the Buyer agrees that the property in the mixed goods shall be and remain with Kiss IT until such payment has been made in full. The Buyer shall hold the mixed goods as bailee for Kiss IT and will store the mixed goods in such a manner that they are clearly identifiable as the property of Kiss IT and will keep separate records in respect of the same. If the Buyer sells the mixed goods, it will hold the proceeds of such sale on trust for Kiss IT and will account to Kiss IT for the value of the goods and keep the proceeds in a fund separate from its own money and will keep separate records in respect of such money.

7.7 When Kiss IT has reasonable cause to believe:

7.7.1 The Buyer has not strictly complied with these Terms and Conditions and, in particular, default of payment in accordance with clause 4, or

7.7.2 The Buyer has or will commit an act of bankruptcy or (being a company) has had a receiver appointed or about to be appointed, or is declared insolvent or a liquidator is appointed or is about to be appointed;

Kiss IT may recover any or all of the goods or the mixed goods and resell the goods or the mixed goods and for such purpose may at any time of the day or night enter by force if necessary upon any premises where such goods or mixed goods are reasonable thought to be stored (and the Buyer grants to Kiss IT an irrevocable right and authority to so recover, re-enter and re-sell).

7.8 In exercising its rights pursuant to this clause, Kiss IT shall be entitled to deduct from any sale of goods or mixed goods recovered from the Buyer all the liabilities and expenses (including legal expenses) incurred by Kiss IT in enforcing or attempting to enforce its rights pursuant to this clause 7.

## 8. PERSONAL PROPERTY SECURITIES ACT 1999

8.1 The Buyer acknowledges that these Terms and Conditions of Sale create a security interest in all present and after-acquired Goods and any proceeds of the sale of the Goods as security for all of the Buyers obligations to Kiss IT pursuant to the Personal Property Securities Act 1999 (the PPSA) and that Kiss IT may register a financing statement to perfect its security interest in the goods delivered or to be delivered to the Buyer in accordance with the provisions of the PPSA.

8.2 The Buyer shall provide all information, execute or arrange for execution of all documents and do other things that Kiss IT may require to ensure that Kiss IT has a perfected first ranking security interest in the goods under the PPSA.

8.3 The Buyer waives its rights to receive a verification statement in respect of any financing statement or financing change statement registered by or on behalf of Kiss IT under the PPSA and agrees that as between Kiss IT and the Buyer the Buyer will have no rights under (or by reference to) sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125, 129, 131, 132, 133 and 134 of the PPSA and where Kiss IT has rights in addition to those in part 9 of the PPSA, those rights shall continue to apply.

8.4 The Buyer shall immediately upon request by Kiss IT procure from any person considered by Kiss IT to be relevant to its security position such agreements and waivers as Kiss IT may at any time require.

8.5 The Buyer shall immediately notify Kiss IT of any change in the Buyers name, address details and any other information provided to Kiss IT to enable Kiss IT to register a financing change statement if required.

## 9. SUPPLY FOR BUSINESS PURPOSES

9.1 Where this agreement would otherwise be subject to the provisions of the Consumer Guarantees Act 1993 and where such supply is a supply for business purposes, the Buyer agrees that the goods are supplied to the Buyer for business purposes in terms of sections 2 and 43 of the Consumer Guarantees Act 1993 and that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply to the Buyer. Such a Buyer is not a Consumer for the purpose of these Terms and Conditions.

## 10. WARRANTY

10.1 This clause 10 shall apply where the Buyer is not a Consumer for the purposes of the Consumer Guarantees Act 1993.

10.2 Except as provided in any express warranty given by Kiss IT, no warranty or condition shall be implied against Kiss IT by any statute, at common law or otherwise and no representation, express condition, warranty or variation of these Terms and Conditions shall be binding on Kiss IT unless it is in writing and signed for on behalf of Kiss IT.

10.3 Where the goods or any of them are subject to any express warranty given by Kiss IT to remedy any defect by repairing or replacing the goods with goods of identical type, then the ultimate consumer shall not be able to exercise its remedies set out in the Consumer Guarantees Act 1993 without first giving Kiss IT a reasonable opportunity to remedy the defect by repair or replacement in accordance with its express warranty.

10.4 Goods returned under warranty must be returned free into Kiss ITs store, all transportation charges, insurance, taxes, duties and charges being borne by the Buyer.

10.5 Software is not covered by Warranty except by the manufacturer of the software.

10.6 Major hardware brands e.g. IBM, HP supply their own comprehensive Return to Base warranty. Whilst Kiss IT will offer support and advice, any labour associated with repair in a warranty situation is chargeable by Kiss IT to the client. It is advised that the client should contact the Hardware manufacturer if fault is deemed to be theirs.

## 11. GUARANTEES

- 11.1 This clause 11 shall apply where the Buyer is a Consumer for the purposes of the Consumer Guarantees Act 1993.
- 11.2 Subject to the rights and remedies contained in the Consumer Guarantees Act 1993, if, as the result of some fault on Kiss ITs part, the goods supplied are defective in that:
- 11.2.1 They are not acceptable quality; or
- 11.2.2 They are not reasonable fit for any particular communicated purpose where the Consumer has reasonably relied on Kiss ITs skill and judgement; or
- 11.2.3 They do not comply with the description given to the Consumer before purchase; or
- 11.2.4 They do not comply with the sample or demonstration model shown to the Consumer before purchase.
- Then the Consumer must notify Kiss IT within seven (7) days of when such defect was discovered or ought to have been discovered and, return the goods to Kiss IT.
- 11.3 Where appropriate, Kiss IT will remedy the defect by way of repair, replacement, or (if necessary) refund.
- 11.4 Where the defect cannot be remedied or is of a substantial character, Kiss IT will, at its option, refund the Consumers money or replace the goods, or compensate the Consumer for the amount of any reduction in value of the goods below the price paid or payable.
- 11.5 With the exception of the relevant statutory warranties contained in the Consumer Guarantees Act 1993, no warranty or condition shall be implied against Kiss IT by any other statute, at common law or otherwise; and no representation, express condition, warranty or variation of these Terms and Conditions shall be binding on Kiss IT unless it is in writing and signed for on behalf of Kiss IT.
- 11.6 Where the goods or any of them are subject to any express warranty given by Kiss IT to remedy any defect by repairing or replacing the goods with goods of identical type, then the Consumer shall not be able to exercise its remedies set out in the Consumer Guarantees Act 1993 without first giving Kiss IT a reasonable opportunity to remedy the defect by repair or replacement in accordance with its express warranty.
- 11.7 Goods returned under express warranty for the purposes of remedying any defect, must, where practical, be returned free into Kiss ITs store, all transportation charges, insurance, taxes, duties and charges being borne by the Consumer.
- 11.8 Where hardware is purchased from a supplier Kiss IT may assist the Buyer, at the Buyers cost to exercise the Buyers rights under the suppliers warranty provisions.

## 12. CLAIMS

- 12.1 Where claims for non-delivery, errors, damage or shortages are made by the Buyer then:
- 12.1.1 All claims must be received by Kiss IT within seven (7) days of delivery in the ordinary course of trade of the goods;
- 12.1.2 All claims must be accompanied by the number and date of supplying invoices;
- 12.1.3 All claims must specifically identify the problem and where appropriate be accompanied by the goods; and
- 12.1.4 Kiss IT shall have a reasonable opportunity to investigate the claim PROVIDED THAT this clause 12.1 shall not prevent the Buyer who is a Consumer from exercising any remedies that Buyer may have under the Consumer Guarantees Act 1993.
- 12.2 Goods returned by a Buyer must be returned free into Kiss ITs store free of all transportation charges, insurance costs, taxes, duties and any other additional charges to the intent that all such charges, insurance, taxes, duties and additional charges shall be paid by the Buyer.
- 12.3 If claims are not received in accordance with the requirements specified in clause 12.1, the Buyer shall be conclusively deemed to have accepted the goods and Kiss IT shall not incur any subsequent liability whatsoever in relation to the goods.

## 13. RETURNS

- 13.1 Goods for return will only be accepted after a Returned Goods Authority (R.G.A.) number has been issued by Kiss IT. In addition a handling charge of 20% of the sale value of the product will be charged on products returned. When goods are not returned in the original condition as supplied to the Buyer, Kiss IT may in its sole and absolute discretion fix the value of those goods and make whatever deduction it sees fit for the alteration in condition of the goods supplied. All freight charges and costs incurred shall not be refunded in any event and shall be at the cost of the Buyer.

## 14. LIMITATION OF LIABILITY

- 14.1 Kiss ITs liability in any case of defect or fault, shall be limited the purchase price of the goods in respect of which such liability arises. Kiss IT shall have no further liability or responsibility for any direct, indirect or consequential injury, loss or damage whatsoever and howsoever arising PROVIDED THAT this clause 14.1 shall not prevent a Buyer who is a Consumer from exercising any remedies that Buyer may have under the Consumer Guarantees Act 1993.
- 14.2 Kiss IT shall not be responsible for any damage whatsoever caused either to the goods supplied or as a result of the malfunction of such goods if:
- 14.2.1 The goods are fitted by unqualified tradesmen; or
- 14.2.2 The goods are fitted in an untradesmanlike manner; or
- 14.2.3 The goods are in any way adapted to a use for which they are not specifically intended; or
- 14.2.4 The goods are added to or repaired using components not recommended or approved by the manufacturer of such goods; or
- 14.2.5 The goods are improperly transported or stored.

## 15. SEVERABILITY

- 15.1 If any of the terms and conditions is held by a Court to be ineffective by virtue of non-registration, illegality or otherwise, then such condition, or part of it, shall be severed from all other conditions without affecting the validity or enforceability of all other conditions or part of them.

## 16. Privacy Act 1993

- 16.1 The Buyer authorises KISS IT or KISS IT's agent to:
- 16.1.1 access, collect, retain and use any information about the Buyer;
- 16.1.1.1 (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Buyer's creditworthiness; or
- 16.1.1.2 for the purpose of marketing products and services to the Buyer.
- 16.1.2 disclose information about the Buyer, whether collected by KISS IT from the Buyer directly or obtained by KISS IT from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Buyer.
- 16.2 Where the Buyer is an individual the authorities under clause 16.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 16.3 The Buyer shall have the right to request KISS IT for a copy of the information about the Buyer retained by KISS IT and the right to request KISS IT to correct any incorrect information about the Buyer held by KISS IT.

## 17. COMMUNICATIONS

- 17.1 Kiss IT may use information received to inform potential Buyers of specials or promotions and to supply information of assistance to buyers when dealing with Kiss IT.