

TERRALINK INTERNATIONAL LIMITED

STANDARD TERMS AND CONDITIONS

Application

- 1.1 Subject to a separate written agreement entered by the parties to the contrary, these terms and conditions apply to all arrangements for the supply of services and the product of such services ("the Services") made between Terralink International Limited ("Terralink", "we", "us", "our") and the Client ("the Client", "you", "your").
- 1.2 These terms may be added to or varied by us or by written agreement with us. In particular, the following matters may be addressed separately:
 - (a) Quoted or estimated cost.
 - (b) Details of the Services, including specifications and quantity.
 - (c) Delivery specifications.
 - (d) Period of supply.

Acceptance

- 1.3 Any quote or estimate given to you will, unless accepted, automatically lapse after 30 days. Terralink may withdraw the quote or estimate prior to receiving written acceptance from you.

Basis of Quotes and Estimates

- 1.4 If a quote has been or is provided, then that quote will be the agreed price for the Services (subject to clause 1.6 and 1.8).
- 1.5 If an estimate is provided, the price charged may vary from the estimate if we consider it is reasonable to do so. You agree to pay the final price for the Services and any disbursements as determined by us.
- 1.6 Disbursements not specifically included in a quote will be charged in addition to the agreed price.
- 1.7 If the Services are to be completed without a quote or estimate then you agree to pay the final price as determined by us.
- 1.8 Quotes and estimates shall be deemed to correctly interpret the original specifications and are based on the cost at the time the quote or estimate is given. If you later require any changes to the Services, and we agree to the changes, these changes will be charged at our prevailing rate.

Payment

- 1.9 Unless otherwise specified, all prices, quotes, or estimates exclude Goods and Services Tax. Where GST is chargeable on an underlying supply or supplies, GST will be in addition to the price, quote or estimate.
- 1.10 Each invoice shall be due and payable by you on or before the 20th day of the month following the date of our invoice for the Services. We may invoice ongoing work on a monthly basis.
- 1.11 If payment is not received by us by the due date, then, without prejudice to our other legal remedies, we may charge compounding default interest on the overdue monies at a rate of five percent (5%) per annum above the current commercial overdraft rate charged by our trading bank (as certified by that bank). The default interest is and may be charged on a day to day basis from due date until all monies, including default interest, have been paid in full. Interest shall be compounded on a monthly basis. All monies received by us shall first be applied in payment of the default interest (if any).
- 1.12 All legal costs and expenses reasonably incurred by us in collecting or attempting to collect any overdue amount (together with any interest payable) shall be payable by you. For the avoidance of doubt we may, in our absolute discretion, charge you for the costs of debt collection to recover any sums owing by you to us. You shall indemnify us in respect of any such costs and expenses.

Risk & Title

- 1.13 All risk in any of the Services (including risk of loss or damage) passes to you on delivery by us. The Services are delivered to you when made available to you or your agent or any carrier (who

will be your carrier whoever pays the charges) at our premises or other delivery point agreed to by us. You will be responsible for any loss or damage to the Services following delivery, and before passing of title, however caused.

- 1.14 No right, title or interest in the Services shall pass to you until we receive full payment for the Services. If required to do so, you shall take such steps as we may request in relation to the Personal Property Securities Act 1999, to protect our interest in the Services, until such time as you have paid for the Services in full.

Delivery

- 1.15 Any dates given for delivery are stated in good faith, but are not to be treated as a condition of the sale. If delivery of the Services is delayed for any reason, we will not be responsible or liable in any way to you or any other party for any direct or indirect loss suffered due to that delay.
- 1.16 Delivery by us to a carrier will be deemed to be delivery to you.

Cancellation

- 1.17 If after placing an order with us, you cancel any Services prior to delivery, we may invoice you for all direct and indirect costs incurred by us to the date you notify cancellation.

Confidentiality

- 1.18 Confidential Information includes all business, personal, strategic and technical information or data, in any form whatsoever, disclosed to or received by you pursuant to the delivery of the Services (whether in writing, verbally, or by any other means and whether directly or indirectly). This includes, by way of example and not limitation, the terms of this Agreement, all information pertaining to the affairs, policies, products, software, operations, processes, costings, pricing methods, personnel, plans or intentions, product information, know-how, intellectual property, design rights, trades secrets, market opportunities and business affairs of Terralink.
- 1.19 Any and all Confidential Information received by you from us shall be held and kept confidential by you and shall be used by you solely for the strict purpose of performing your obligations pursuant to the Agreement. Confidential Information shall not be disclosed by you to any third party except with, and on the terms of, prior written consent of Terralink or as required by law.
- 1.20 Terralink's Confidential Information remains our property and no right, entitlement or interest in our Confidential Information is extended or conveyed to you. At our request, and upon termination of this Agreement, you must ensure that all our Confidential Information is either destroyed or returned as requested, and must, if requested by us, forthwith certify in writing that this has occurred.
- 1.21 The terms of this Confidentiality clause shall survive the termination of this Agreement.

Licensing

- 1.22 You shall only be entitled to use the Services internally in the course of, and for the purpose of, your ordinary business at the date of this Agreement.
- 1.23 You shall not be entitled to disclose or sell any Services to, or use any Services for, the benefit of any third parties.
- 1.24 You must at all times ensure that the Services are used only in accordance with the terms of this Agreement and for this purpose, without limitation, must at all times keep the Services secure and confidential.
- 1.25 Where you publish the Services in any manner whatsoever, including but not limited to printing or publishing the Services on your internal or external website, You must display the following proprietary devices. For the avoidance of doubt such proprietary devices shall be displayed where you publish the Services in their original format as well as on any reproduction or adaptation of the Services.
- 1.26 Where the Services are published in the format in which they were supplied the following proprietary device should be used:

- 1.27 Where the Services are published in the format which is an adaptation of or amendment to the Services the following proprietary device should be used:

Created Using



Intellectual Property

- 1.28 Unless otherwise agreed in writing, all intellectual property in, and relating to the Services (including inventions, patents, trademarks, copyright, know how, designs, trade secrets and other proprietary rights or forms of intellectual property, and information confidential to us) and any alterations, additions or amendments to intellectual property shall remain the property of Terralink, or of a third party as notified to you by us, and shall not be disclosed to any other person without our written consent.
- 1.29 We will retain ownership in all our data provided to you as part of the work. You will not provide, supply or otherwise make available such data to any other party without our written agreement.
- 1.30 Notwithstanding anything to the contrary in this agreement, we will retain all ownership in all data collected as part of the Services. We may use such data as we see fit, including building other products, services or data sets.
- 1.31 You agree to take all reasonable steps to protect our intellectual property and ownership rights.
- 1.32 The terms of this Intellectual Property clause will survive termination of this Agreement.

Warranties

- 1.33 All conditions, guarantees and warranties expressed or implied by statute, common law, equity, trade customer usage or otherwise, are expressly excluded to the maximum extent permitted by law. Our liability for breach of condition, guarantee or warranty that cannot be excluded is limited, at our option, to supplying the Services in question again, paying the cost of having the Services supplied again, or rectifying the fault in the Services that caused our liability.
- 1.34 Where these terms would otherwise be subject to the Consumer Guarantees Act 1993 (“the Act”), you agree that you are acquiring the Services for business purposes and that the Act does not apply to the supply of the work to you.

Liability

- 1.35 Terralink shall not be liable to you for any direct or consequential loss, damage, or expense incurred by you or anyone else as a result of or in connection with the Services unless the loss or damage arises directly as a result of our gross negligence or willful misconduct. In any event, our total aggregate liability to you under or in connection with this Agreement shall not under any circumstance exceed an amount equal to the total sum paid by you to us in relation to this Agreement.
- 1.36 You indemnify us against any liability for any direct, indirect or consequential injury, loss or damage arising out of any act, default or omission of, or any representation made by you or your servants or agents.
- 1.37 Terralink shall not be liable for the commercial performance of the Services.

Termination

- 1.38 We may terminate this Agreement, by giving you thirty (30) days notice in writing.
- 1.39 We may immediately terminate this Agreement, if you commit a breach of any of these Terms and Conditions or if you become insolvent, or subject to receivership or liquidation. You will have no remedies against Terralink in the event of such termination.

- 1.40 Termination of this Agreement shall be without prejudice to the rights of either party accrued up to the date of the termination.

Force Majeure

- 1.41 We shall not be liable for any delay or failure to fulfill our obligations under this Agreement if such delay or failure arises from any circumstance arising that is beyond our control. If such circumstance subsists for thirty (30) days or more, we may terminate this Agreement by providing you with written notice.

Disputes

- 1.42 If any dispute arises between you and us in relation to the provision of the Services, then the parties must first try to settle the dispute by way of good faith negotiations. Any dispute, which cannot be settled by good faith negotiations within 14 days, must be submitted to mediation. The parties must mediate the dispute in accordance with the Mediation Rules of the New Zealand Chapter of Lawyers Engaged in Alternative Dispute Resolution (LEADR), or its successor, and the Executive Chair of LEADR (or his nominee) shall select the mediator and determine the mediator's remuneration.
- 1.43 If the dispute is not able to be resolved by mediation in terms of paragraph 1.36 within 30 days, or such extended period as the parties may agree, the dispute must be referred to arbitration by a single arbitrator (nominated by the President of the Wellington branch of the New Zealand Law Society).
- 1.44 The arbitration shall be conducted in accordance with the Arbitration Act 1996 and the parties expressly include the provisions of the Second Schedule of the Act and agree that the decision of the arbitrator shall be final and binding except that the parties reserve the right to appeal to the High Court on any question of law arising out of an award.

Credit Checks

- 1.45 Terralink reserves the right to instruct a credit reporting service to carry out a credit check on you to establish creditworthiness. You agree to co-operate to the fullest extent possible with any reasonable request made in relation to a credit check under this clause. You acknowledge that information sourced from you as a result of such credit check (including, but not limited to, a default in your payment obligations) may be held by our credit reporting service and such information may be provided to the credit reporting service's other customers.

General

- 1.45 We may vary these terms at any time by notice in writing to you. Any such variation will take effect from acceptance of the first order for work following notice of the variation being given to you.
- 1.46 You shall not vary the terms of this Agreement, except by agreement in writing with us.
- 1.47 This Agreement is governed according to the laws of New Zealand, and the courts of New Zealand will have non-exclusive jurisdiction in any proceedings relating to this Agreement.
- 1.48 If any provision of this Agreement is held invalid, unenforceable or illegal for any reason, this Agreement shall remain in full force apart from such provision, which shall be deemed deleted.
- 1.49 This Agreement constitutes the entire agreement between the parties and supersedes all prior representations, agreements, statements and understandings, whether verbal or in writing.
- 1.50 We are permitted to assign our interests, and novate our obligations (without recourse by you) under this Agreement. You cannot assign any of your rights or obligations under this Agreement without our prior written consent.