

EMPOWERED TECHNICAL SERVICES LIMITED
GENERAL TERMS AND CONDITIONS OF TRADE

1. In these Terms, the following words and phrases have the following meaning:
 - “**Confidential Information**” means any information relating to the business of either party, including customers, know-how or trade secrets, whether of a technical or business nature.
 - “**Purchase Order**” means a Purchase Order agreed with you setting out the relevant engagement to be undertaken by you, scope of Services, fees, and other matters.
 - “**Fees**” means the costs, compensation, disbursements (including to third parties), reasonable travel and accommodation costs, procurement of goods costs, and other entitlements arising from us providing the Services to you.
 - “**GST**” means Services and services tax as defined in the Goods and Services Tax Act 1985.
 - “**Intellectual Property**” means, in respect of a party, all intellectual and industrial property rights and interests (including common law rights and interests) held by that party, or lawfully used by that party, including without limitation:
 - (a) Patents, trademarks, trade secrets, copyright, registered designs, trade names, symbols and logos;
 - (b) Applications to register patents, trademarks, service marks and designs; and
 - (c) All formulae, methods, plans, data, drawings, specifications, characteristics, algorithms, source and object code, equipment, designs, inventions, discoveries, improvements, know-how, experience, software products, trade information, trade secrets, price lists, costings, brochures and their information.
 - “**Services**” means any services provided by us to you including as set out in the Purchase Order (as may be updated or varied from time to time).
 - “**Terms**” means these Terms and Conditions of Trade, including the terms of the Purchase Order.
 - “**we**”, “**us**”, “**our**” means Empowered Technical Services Limited, its directors, shareholders, related companies (as defined in the Companies Act 1993), agents, employees, contractors, successors and assigns.
 - “**you**” and “**your**” means the person or entity acquiring Services from us.
2. **SERVICES**
- 2.1 You engage us to provide the Services, on the terms set out in the Purchase Order and these Terms. You will comply with all your obligations set out in the Purchase Order and these Terms.
3. **ACCEPTANCE**
- 3.1 These Terms are our standard terms and conditions which apply in respect of all Services and other work carried out by us, except to the extent that we otherwise agree with you in writing. Any Purchase Order will be subject to these Terms. All other terms and conditions are expressly excluded unless otherwise agreed in writing by us. In the event of any conflict or inconsistency between the Purchase Order and these Terms, these Terms will prevail.
- 3.2 A binding contract for the Services is deemed to be formed between us and you when we accept a Purchase Order in writing or we otherwise provide any Services, whichever occurs first. You cannot cancel or suspend such contract once it has been formed, unless we agree otherwise in writing.
4. **FEES**
- 4.1 Our Fees will be calculated on an hourly rate basis, however, we may take into account other factors in addition to the hourly charge. Hourly rates are reviewed regularly and may change during the Services. Estimates or quotes are given as a guide only and not as a fixed fee. We will give you regular updates as matters progress and knowledge of the actual scope of the Services becomes clearer.
- 4.2 In providing the Services we may incur disbursements or have to make payments to third parties on your behalf. These will be included in our invoice to you when the expense is incurred. We may require an advance payment for the disbursements or expenses which we will be incurring on your behalf.
- 4.3 All Fees are exclusive of GST and any other taxes or duties which may be applicable.
- 4.4 We may ask you to pre-pay amounts to us under our Purchase Order, or to provide security for our fees and expenses. You authorise us: (a) to debit against amounts pre-paid by you; and (b) to deduct from any funds held on your behalf in our accounts, any Fees for which we have provided an invoice. Any pre-payment required by us will be paid prior to the provision of any Services and, unless otherwise specified in the Purchase Order, is non-refundable.
- 4.5 You authorise us (without further reference to you) to obtain information about you from you or any other person (including any credit or debt collectors or law enforcement agencies), and you consent to any person providing us with that information. You agree that we may use any information we have about you relating to your credit-worthiness and give that information to any other person, including any credit or debt collective agency, for credit arrangements and debt collection purposes. If you are a natural person, you have rights under the Privacy Act 1993 to access and request correction of any personal information about you.
5. **PAYMENT**
- 5.1 Except as set out in our Purchase Order, full payment of Fees and expenses incurred will be required on the 20th of the month following the date on which we serve our invoice to you. The method of payment will be as directed by us.
- 5.2 We may send you an invoice on completion of the Services or termination of our engagement. We may also send you an invoice when we incur a significant expense.
- 5.3 You must pay all amounts owing to us without set off or deduction.
- 5.4 Without prejudice to our other rights and remedies under these Terms or at law if you fail to make payment of any amount due to us:
 - (a) we may refuse to supply the Services to you;
 - (b) we may charge interest on the amount owing at a rate equivalent to our overdraft rate plus 3% per year from the due date for payment until payment is received in full (both prior to and following any judgment obtained).
- 5.5 Any expenses, disbursements and legal costs incurred by us in the enforcement of any rights contained in these Terms will be paid by you, including our reasonable solicitor’s fees or debt collection agency fees.
6. **PROVISION OF SERVICES**
- 6.1 Delivery of the Services will be made by us to the place and by the method specified by you in the Purchase Order. You agree that we, our agents or employees may enter onto any premises.
- 6.2 Dates given by us for provision of the Services are given in good faith but are an estimate only and are not to be treated as a condition of our contract with you. If delivery is delayed for any reason we will not be liable for any costs, losses, damages or claims in relation to that delay in supply.
- 6.3 We warrant that we will:
 - (a) deliver the Services materially in accordance with these Terms, the Purchase Order, applicable laws and regulations;
 - (b) comply, with all the your reasonable instructions and the Health and Safety at Work Act 2015;
 - (c) have in place and comply with a health and safety management plan; and
 - (d) notify you of risks to health and safety arising from the Site which are reasonably foreseeable to us and which may affect you or us arising out of or in any way connected with the Services, and we must have due regard to such risks in performing our obligations under these Terms.
7. **YOUR OBLIGATIONS**
- 7.1 You will:
 - (a) provide to us, in a timely manner (at your cost) access to your premises and to other facilities as reasonably required by us in the Purchase Order to deliver the Services or to perform the Services and our obligations under these Terms;
 - (b) provide to us, in a timely manner (at your cost) any documents, information or other materials as we may reasonably require for the performance of our obligations, and ensure that the documents, information or materials are complete and accurate in all material respects.
 - (c) co-operate with us in all matters relating to the Services and will appoint a manager in relation to the Services who shall have the authority to contractually bind you on matters relating to the Services;
 - (d) be responsible for, and will inform us of, all health and safety rules, regulations, plans and hazards and any other reasonable security requirements that apply to your business;
 - (e) shall provide a working environment on its site that complies with the Health and Safety at Work Act 2015;
 - (f) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to your business and the Services;
 - (g) comply with our reasonable directions in relation to the Services during the period in which we provide the Services.
8. **CONFIDENTIALITY**
- 8.1 Each party must not at any time (except in the proper course of performing its duties under these Terms) disclose to any person any Confidential Information of, or relating to, the other party, without the prior written approval of that other party. Each party shall ensure that its employees, contractors, officers and agents do not, without the written permission of the other party, use Confidential Information supplied to it for any purpose that is not related to these Terms.
- 8.2 Nothing in this clause prohibits disclosure or use of information which:
 - (a) is in the public domain otherwise than as a result of a breach of confidence; or
 - (b) is required to be disclosed by law or any government or governmental body, authority or agency having authority over a party to these Terms.
9. **INTELLECTUAL PROPERTY RIGHTS**
- 9.1 Each party will retain ownership of its own Intellectual Property Rights existing at the time these Terms are entered into. The parties agree that the Services are being supplied by us, and acquired by you, in trade and that sections 9,

- 12A and 13 of the Fair Trading Act 1986 will not apply between the parties, and that it is fair and reasonable to exclude their application.
- 9.2 You acknowledge and agree that all Intellectual Property Rights created or devised by us in connection with the provision of the Services, shall be owned by and shall vest in us, as and when created. To the extent that you become the owner of any Intellectual Property Rights arising in connection with the Services, you hereby assign and transfer absolutely, and shall procure the assignment of, all rights, title and interest in and to the Intellectual Property to us.
- 9.3 You shall have no right to use, sell, reproduce, copy, distribute or otherwise dispose of our Intellectual Property Rights, and you must not allow any third party to reproduce our Intellectual Property Rights.
- 10. DISPUTE RESOLUTION**
- 10.1 Where any question, dispute or difference ("Dispute") arises between the parties concerning or in any way arising out of these Terms or the performance of either party in terms of these Terms, the parties will make a genuine effort to resolve the question, dispute or difference without resorting to litigation using the procedures set out in this clause.
- 10.2 The party seeking resolution of a Dispute (the "First Party") must provide written notice of the same to the other party (the "Other Party").
- 10.3 If the parties are unable to resolve the Dispute by discussion and negotiation within 14 days of receipt of the written notice from the Other Party (or a timeframe as otherwise agreed), then the parties must immediately refer the Dispute to mediation.
- 10.4 The mediation must be conducted by a mediator and at a fee agreed by the parties. Failing agreement between the parties, the mediator will be selected and his/her fee determined by the President or Vice President of the Arbitrators' and Mediators' Institute of New Zealand.
- 10.5 The mediator's fee will be borne equally between the parties.
- 10.6 If the Dispute remains unresolved after the mediation, then the dispute must be submitted to the arbitration of a single arbitrator agreed on between the parties, or in default of agreement to be nominated by the President or Vice President of the Arbitrators and Mediators Institute of New Zealand. The arbitration will be conducted in accordance with the Arbitration Act 1996 and the provisions of the Second Schedule of the Act will apply. The parties reserve the right to appeal to the High Court on any question of law arising out of an award.
- 10.7 Nothing in this clause 10 will preclude or prevent either party from taking immediate steps to seek urgent interlocutory relief before an appropriate court.
- 11. LIABILITY**
- 11.1 You agree that you are purchasing the Services for the purposes of a business and therefore, as between you and us, to the extent permitted by law, the Consumer Guarantees Act 1993 will not apply to the supply of Services from us to you. You agree that this clause is fair and reasonable in the context of these Terms.
- 11.2 To the extent that our liability is not otherwise limited or excluded, and to the fullest extent permitted by law, our aggregate liability to you whether in tort (including negligence), contract, at law or otherwise for any loss, damage, liability, claim or injury in relation to the Services is limited to the price paid by you for the Services in respect of which the claim or claims are made. You agree to indemnify and hold us harmless against all costs, loss, claims or liability suffered or incurred by us arising from the Services.
- 11.3 To the fullest extent permissible by law all warranties, conditions or other terms implied by law are excluded. These Terms constitute the sole understanding of the parties in relation to its subject matter and supersede all prior understandings, written or oral, which will be of no further force or effect.
- 11.4 In no event will either party be liable (whether in contract, tort, including negligence, under an indemnity, or otherwise) to the other party for:
- (a) any loss, damage, liability, cost or expense caused by any act or omission of the other party; and
 - (b) any indirect or consequential loss or damages suffered by the other party
- 12. INSURANCE**
- 12.1 We will effect and maintain the following insurance with a reputable insurer:
- (a) public liability for not less than \$10,000,000.00
 - (b) commercial motor insurance for not less than \$10,000,000.00.
- 12.2 If requested by you, we will provide you with evidence of our insurance within a reasonable timeframe.
- 13. TERMINATION**
- 13.1 We may immediately terminate or suspend the Services, the Purchase Order and/or these Terms if you: (a) do not make payment of any amounts due to us on or before the due date for payment; (b) indicate to us that you will not pay any sums by the due date; (c) fail to comply with your obligations under the Purchase Order or these Terms; or (d) suffer any bankruptcy, liquidation, receivership, insolvency, compromise with creditors or other similar event. On such suspension or termination, all amounts owing to us and all fees become immediately due and payable in their entirety.
- 13.2 On termination the accrued rights, remedies obligations and liabilities of the parties as at termination shall not be affected.
- 14. MISCELLANEOUS**
- 14.1 Notices under these Terms will be sufficiently given if posted or successfully transmitted by email to the intended recipient at their last known address.
- 14.2 Nothing in these Terms is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name of or on behalf of the other or otherwise to bind the other in any way (including the making of any obligation or liability and the exercise of any right or power).
- 14.3 The Purchase Order and these Terms contains all of the terms, representations and warranties made between the parties and supersedes all prior discussions and agreements covering the subject matter of the Services.
- 14.4 You agree that the rights and benefits conferred upon us by these Terms shall extend to each of our directors, shareholders, related companies (as defined in the Companies Act 1993), agents, employees, contractors, successors and assigns and are intended to be enforceable by such persons for the purposes of the Contract and Commercial Law Act 2017.
- 14.5 Neither party assign or transfer all or any part of your rights or obligations under these Terms without the other parties prior written consent.
- 14.6 Neither party will be in breach of any of its obligations under these Terms because of any failure on our part directly or indirectly due to a cause beyond our reasonable control.
- 14.7 The illegality, invalidity or unenforceability of any provision of these Terms will not affect the legality, validity or enforceability of another provision.
- 14.8 No waiver of any provision of these Terms will serve as a waiver of any other provision of these Terms and we will not have waived or be deemed to have waived any provision of these Terms unless such waiver is in writing and executed by us.
- 14.9 These Terms apply to any current engagement for Services and also to any future engagement for Services, whether or not we send you another copy of them.
- 14.10 Our relationship with you is governed by New Zealand law and New Zealand courts have non-exclusive jurisdiction.