



NETLINKZ

STANDARD TERMS AND CONDITIONS

IMPORTANT INFORMATION

Is any liability excluded under the Contract?

Yes. The liability of Netlinkz under the Contract will be:

- limited to supplying the Equipment and/or Services again or paying the cost of having the Equipment and/or Services supplied again (see clause 9.2); and
- capped:
 - in relation to Services, at the total Charges paid by the Customer in the last 12 months for the relevant Services; and
 - in relation to Equipment, at the total Charges paid by the Customer for the Equipment, (see clause 9.3).

In addition, Netlinkz will not be liable for any loss, liability or cost, howsoever arising, suffered by the Customer as a result of late delivery of Equipment or delay in the commencement of provision of Services for any reason (see clause 3.3).

These limitations of liability are subject to any applicable laws, including the Consumer Guarantees Act and Fair Trading Act.

1. DEFINITIONS

1.1. Definitions

In the Contract, unless the context requires otherwise, the following definitions apply. Additional terms are defined in the body of these Conditions.

Accepted Quotation means a Quotation accepted by the Customer in accordance with this clause 2.

Business Day means any day other than a Saturday, Sunday or public holiday in Auckland, New Zealand.

Charges means the fees and charges payable by the Customer to Netlinkz for Equipment and/or Services provided under the Contract.

Commencement Date means the date on which Services are first provided to the Customer.

Conditions means these terms and conditions of supply.

Confidential Information means all information treated by the disclosing party (**Discloser**) as confidential of which the receiving party (**Recipient**) knows or ought to know is confidential, but excludes information:

- (a) the Recipient creates (whether alone or jointly with any person) independently of the Discloser's Confidential Information;
- (b) that is or becomes public knowledge (otherwise than as a result of a breach of confidentiality by the Recipient or any person to whom it has disclosed the information); or
- (c) obtained without restriction as to further disclosure from a source other than the Discloser through no breach of confidentiality by that source.

Contract means each contract between Netlinkz and the Customer pursuant to which Services are supplied by Netlinkz to the Customer, as constituted under clause 2.

Customer means the person or entity identified as the "Customer" in the Quotation.

Equipment means the equipment supplied or to be supplied by Netlinkz to the Customer under the Contract, the details of which are specified in an Accepted Quotation.

Force Majeure Event means any act, occurrence or event not within the control of the relevant party and which prevents that party from performing, or will significantly delay the performance of, any of its obligations under the Contract (apart from any obligations to make any payment under the Contract), including, fire, flood, lightning, storm and tempest, strikes, lockouts or other industrial disputes, acts of war or acts of any public enemy, pandemic, riots, explosion or any action or inaction by any government agency.

Insolvency Event means, in respect of a party, the occurrence of any of the following in respect of that party:

- (a) an application is made to a court for an order, or an order is made, that the party be wound up;
- (b) a liquidator, administrator, trustee administrator, receiver or receiver and manager is appointed in relation to the party or any of its assets; or
- (c) the party becomes bankrupt, goes into liquidation (whether voluntary or compulsory), enters into administration, offers to make or enters into any arrangement or composition with any of its creditors or is, or is deemed to be, insolvent within the meaning of the *Companies Act 1993* (or under the laws of any applicable jurisdiction).

Intellectual Property means all intellectual and industrial property rights, conferred by statute, at common law, in equity or otherwise, including copyright and neighbouring rights, all rights in relation to inventions, patents, patent applications, plant varieties, registered and unregistered trade marks, registered and unregistered designs, know-how (being the body of knowledge, technical expertise, experience and skills, confidential processes and technical and confidential information acquired by a person in the design, development, manufacturing and marketing of a product or service), trade



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secrets and confidential information, and the goodwill and reputation associated with such.

Netlinkz or Company means Netlinkz Limited ABN 55 141 509 426 and any of its Related Companies.

Netlinkz IP means any material, document, data or Intellectual Property which is owned, created, written or otherwise brought into existence by or on behalf of Netlinkz (or any of its Related Bodies Corporate), whether:

- (a) existing at the Commencement Date; or
- (b) produced by or on behalf of Netlinkz (or any of its Related Bodies Corporate) after the Commencement Date (including in the course of providing the Services to the Customer).

Personnel of a party means the officers, employees, agents, consultants and subcontractors of that party or of that party's Related Bodies Corporate.

Quotation means a quotation issued by the Company to the Customer for Equipment and/or Services.

Quotation Period means the period commencing on the date of issue by Netlinkz of the Quotation and ending on the expiry date stated in the Quotation (or if no expiry date is stated, 30 days after the date of issue of the Quotation).

Related Company has the meaning given to that term by the *Companies Act 1993*.

Service Plan means the Customer's service plan for the Services specified in an Accepted Quotation.

Service Schedule means, in relation to a particular Service, the service schedule for that Service attached to these Conditions, or otherwise provided to the Customer by Netlinkz.

Services means the services supplied or to be supplied by Netlinkz to the Customer under the Contract, the details of which are specified in an Accepted Quotation.

1.2. Interpretation

In the Contract, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) where a word or phrase is defined in the Contract, other parts of speech and grammatical forms of that word or phrase have a corresponding meaning;
- (c) an expression importing a natural person includes any company, partnership, joint venture, association (whether incorporated or not), corporation or other body corporate and any authority or agency (whether governmental, semi-governmental or local);
- (d) the expression "including" and similar expressions are to be construed as preceding the expression "without limitation";
- (e) a reference to a document or agreement, includes the document or agreement as novated, altered, supplemented or replaced from time to time;

- (f) a reference to NZ\$, \$NZ, NZD, dollar or \$ is to New Zealand currency;
- (g) a reference to time is to Auckland time;
- (h) a reference to a party is to a party to the Contract, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (i) a reference to any statute, regulation, proclamation, ordinance or by law includes all statutes, regulations, proclamations, ordinances or by laws varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by laws issued under that statute; and
- (j) no provision of the Contract will be construed adversely to a party solely on the ground that the party was responsible for the preparation of the Contract or that provision.

2. CONTRACT FORMATION

- 2.1. Except as otherwise agreed in writing between Netlinkz and the Customer, the terms of each Contract between Netlinkz and the Customer in relation to the provision of Equipment and/or Services by Netlinkz are constituted by:
 - (a) the Accepted Quotation for those Equipment and/or Services (including any special conditions specified in the Accepted Quotation);
 - (b) the Service Schedule (if any) applicable to the specific Services provided to the Customer;
 - (c) these Conditions; and
 - (d) any other document that Netlinkz and the Customer agree in writing forms part of the Contract.
- 2.2. Unless Netlinkz and the Customer agree otherwise in writing, if there is any ambiguity, discrepancy or inconsistency between the terms of the Contract, then each of the above items will prevail in descending order of precedence with any item listed earlier prevailing over a later listed item.
- 2.3. The documents set out in clause 2.1 constitute the entire written agreement in connection with the supply of Equipment and/or Services between Netlinkz and the Customer. All other terms and conditions, expressed or implied, are excluded to the fullest extent permitted by law, including without limitation any terms and conditions sought to be imposed by the Customer. Unless otherwise agreed in writing by an authorised employee of Netlinkz, Netlinkz is not bound by any terms or conditions put forward by the Customer in its acceptance of the Quotation.
- 2.4. Any brochure, information flyer or other information document given by Netlinkz or on its website (that is not a Quotation) is a mere invitation to treat and does not constitute a contractual offer.



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2.5. All Quotations that are not accepted by the Customer within the Quotation Period will lapse at the end of the Quotation Period, but Netlinkz may vary or withdraw a Quotation at any time prior to the Quotation lapsing.

2.6. A binding contract for the supply of Equipment and/or Services by Netlinkz to the Customer only comes into existence when the Quotation for those Equipment and/or Services has been issued by Netlinkz to the Customer, and the Quotation accepted by the Customer in accordance with the instructions set out in the Quotation.

3. DELIVERY OF EQUIPMENT AND PROVISION OF SERVICES

3.1. Unless the Quotation expressly provides otherwise, Equipment will be delivered by or on behalf of Netlinkz to the Customer's nominated address as stated in the Quotation. Shipping and handling charges will be borne by the Customer, and will be calculated and notified to the Customer after the delivery address and any other information required by Netlinkz or delivery partners (such as Equipment type and quantity) are confirmed. Delivery partners will be determined by Netlinkz unless otherwise agreed in writing with the Customer.

3.2. Delivery dates or lead times given by Netlinkz in the Quotation or Accepted Quotation or otherwise are given in good faith, but are estimates only.

3.3. Netlinkz will not be liable for any loss, liability or cost, howsoever arising, suffered by the Customer as a result of late delivery of Equipment or delay in the commencement of provision of Services for any reason.

4. TITLE AND RISK IN EQUIPMENT

4.1. Risk passes to the Customer from the time of delivery of the Equipment to the Customer. Netlinkz will retain title to the Equipment supplied to the Customer until the later to occur of:

- (a) delivery of the Equipment; and
- (b) all payments under the Contract for the Equipment (including shipping and handling charges) having been paid in full.

4.2. Generally, unless the Quotation states otherwise, Netlinkz will only deliver Equipment to the Customer after the Customer has paid in full for that Equipment. However, where Netlinkz has delivered Equipment to the Customer where the Customer has not fully paid Netlinkz for the Equipment, and the Customer enters into an Insolvency Event:

- (a) the Customer may not sell or part with possession of the Equipment; and
- (b) Netlinkz will be entitled, without prejudice to Netlinkz's other rights and remedies, to receive and repossess such Equipment and to enter any premises on reasonable notice for this purpose.

4.3. The Customer acknowledges and agrees that:

(a) the retention of title in clause 4.2 creates a Security Interest in the Equipment and their Proceeds in favour of Netlinkz and that Security Interest is a Purchase Money Security Interest;

(b) it will not allow anything to be done or act in a way that might adversely affect the Security Interest in the Equipment that is granted to Netlinkz; and

(c) it indemnifies Netlinkz for all of its direct and reasonable costs associated with enforcing its Security Interest.

The terms "Security Interest", "Proceeds" and "Purchase Money Security Interest" used in this clause have the respective meanings given to those terms in the *Personal Property Securities Act 1999*.

4.4. Except as expressly provided by the Contract and to the extent permitted by law, the Customer is responsible for the proper operation and maintenance of the Equipment, and any assistance sought from Netlinkz in repairing or replacing Equipment will be provided at Netlinkz's discretion and may incur additional costs.

5. CHARGES

5.1. Unless otherwise specified in the Accepted Quotation:

- (a) Netlinkz will invoice the Customer:
 - (i) for Equipment, prior to it being shipped;
 - (ii) for any installation Services, after the installation Services have been performed; and
 - (iii) for any other Services, on a monthly basis starting from commencement of the Services; and

(b) the Customer must pay the invoiced Charges within 30 days of the invoice date.

The Customer must pay all amounts in cleared funds in accordance with the payment directions as set out in Netlinkz's invoice, without set-off, withholding, deduction or counterclaim.

5.2. Unless otherwise expressly stated in the Quotation or Accepted Quotation, Charges are quoted exclusive of any freight, delivery, cartage, packing, crating, handling storage or export charges, GST or similar taxes and the Customer is liable for these in addition to the Charges quoted.

5.3. If any taxable supply made by Netlinkz under the Contract is subject to GST, Netlinkz may, in addition to the consideration for the supply, recover an additional amount on account of GST. The additional amount payable by the Customer under this clause is equal to the consideration payable to the supplier for the relevant supply multiplied by the prevailing GST rate and is, subject to Netlinkz providing a tax invoice, payable at the same time and in the same manner as the consideration for the supply to which the additional amount relates. Except where the context suggests otherwise, terms used



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in this clause 5.3 have the meanings given to those terms by the *Goods and Services Tax Act 1985* and any regulations made under that Act.

5.4. Without prejudice to any other of Netlinkz's rights, if the Customer fails to pay any Charges by their due date, Netlinkz may:

- (a) charge interest on any overdue amounts at a rate equal to the prime overdraft interest rate charged by Netlinkz's principal commercial bankers from time to time, plus 2% per annum. Interest payments will accrue on a daily basis from the due date for payment until payment in full (including interest) is received by Netlinkz, whether before or after any judgment; and/or
- (b) suspend the provision of the Services upon seven days' notice, until such outstanding Charges are paid by the Customer.

6. INTELLECTUAL PROPERTY

- 6.1. Nothing in the Contract is intended to be construed as granting the Customer any goodwill or ownership rights in the Netlinkz IP. Except as expressly provided in the Contract, nothing in the Contract confers on the Customer any right or interest in, or licence to use, the Netlinkz IP.
- 6.2. Netlinkz grants to the Customer a non-exclusive, non-transferable, non-sublicensable licence to any Netlinkz IP provided to the Customer, solely for the purpose of the Customer obtaining the benefit of the Services, and only for the duration that the Services are provided to the Customer.

7. CHANGES AND CANCELLATION TO SERVICES

- 7.1. Netlinkz may change or discontinue the Services, or change or vary the Charges or these Conditions (or any documents forming this Contract), from time to time, provided that Netlinkz will provide the Customer with at least 30 days' prior notice of any such changes (**Change Notice**). Any variation to the Charges or these Conditions will not apply retrospectively to the Customer unless the variation has no adverse effect on the Customer.
- 7.2. Subject to the Customer's rights under clause 8, by continuing to use the Services after the notice period referred to in clause 7.1, the Customer agrees to any changes notified by Netlinkz to the Customer under that clause.

8. TERM AND TERMINATION

- 8.1. Unless the Accepted Quotation provides otherwise, this Contract will commence on the date specified in the Accepted Quotation and will continue in force until terminated in accordance with the provisions of this Contract.
- 8.2. Either party (**non-defaulting party**) may immediately terminate the Contract, by providing notice in writing to the other party (**defaulting party**) if:
 - (a) the defaulting party commits a material breach of the Contract and either the breach is not remedied within

14 days after receiving a notice of the breach from the non-defaulting party, or the breach is not capable of remedy. For this purpose, non-payment of Charges by the Customer by their due date is a material breach by the Customer; or

- (b) subject to the *Companies Act 1993*, an Insolvency Event occurs in relation to the defaulting party.

8.3. In addition to its rights under clause 8.1, Netlinkz may immediately terminate the Services or the Contract, by providing notice in writing to the Customer if Netlinkz:

- (a) cannot provide the Services in accordance with the Contract because of a third party failure (not caused by Netlinkz);
- (b) is required to do so by law or government direction;
- (c) is unable to obtain or retain any permit, licence, lease or consent required to provide the Service; or
- (d) providing the Services to the Customer may be illegal or Netlinkz reasonably anticipates that it may become illegal.

8.4. If the Customer receives a Change Notice from Netlinkz under clause 7.1, the Customer may immediately terminate the Services or the Contract provided that they do so within the period of 30 days from when the Change Notice is given by Netlinkz.

8.5. Either Netlinkz or the Customer may cancel the Services or terminate the Contract for convenience by giving at least 30 days' notice in writing to the other party.

8.6. Upon termination of Services or the Contract, the Customer must promptly pay all Charges for Equipment and Services provided by Netlinkz up to and including the date of termination. In relation to Charges which are payable on certain milestones being reached, the Customer must also pay a pro rata proportion of such Charges that fairly represents the work undertaken by or on behalf of Netlinkz up to and including the date of termination towards achieving that milestone.

8.7. Any accrued rights and remedies of each party under the Contract as at the date of termination or expiry are unaffected.

8.8. This clause 8, clauses 4, 5, 6, 9, 11, 12, 13, 14 and 15 and (to the extent applicable to the foregoing clauses) clause 1, and any other provisions which are expressed to or, by their nature, survive expiry or termination of the Contract will survive such expiry or termination.

9. LIABILITY

9.1. Except as expressly provided in the Contract and subject to clause 9.2, all conditions, representations and warranties (statutory, express or implied) are expressly excluded.

9.2. Netlinkz does not exclude, restrict or modify any liability that cannot be (or to the extent that it cannot be) excluded, restricted or modified, as between Netlinkz and the Customer by applicable law (including any such

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liability under the *Consumer Guarantees Act 1993* or *Fair Trading Act 1986*. However, where such statutory provisions apply, to the extent to which Netlinkz is entitled to do so, Netlinkz's liability will be limited at its option to:

- (a) in the case of supply of services:
 - (i) the supply of the services again; or
 - (ii) the payment of the cost of having the services supplied again; and
- (b) in the case of supply of goods:
 - (i) the replacement of the goods or supply of equivalent goods;
 - (ii) the payment of the cost of replacing the goods or acquiring equivalent goods; or
 - (iii) the repair of the goods or payment of the cost of having the goods repaired.

9.3. To the extent permitted by law, Netlinkz's maximum aggregate liability in contract, tort (including negligence or breach of statutory duty), by statute or otherwise, for any claims arising under or in connection with the Contract is:

- (a) in respect of all claims in connection with Services, limited to the total Charges paid by the Customer to Netlinkz for those Services over the 12-month period prior to the claim arising; and
- (b) in respect of Equipment, limited to the total Charges paid by the Customer to Netlinkz for that Equipment.

9.4. To the extent permitted by law, the Customer's maximum aggregate liability in contract, tort (including negligence or breach of statutory duty), by statute or otherwise, for any claims arising under or in connection with the Contract, other than an obligation to pay the Charges, is the total Charges paid by the Customer to Netlinkz under the Contract over the 12-month period prior to the claim arising.

9.5. To the extent permitted by law, neither party will be liable to the other party for any indirect, consequential, special or economic loss, cost, damage, liability or expense, whether arising in tort (including negligence), contract, statute or otherwise, including any loss of profit, loss of use, loss of income, loss of production or loss of actual or potential business opportunity.

10. FORCE MAJEURE

10.1. No party will be liable to the other for any failure in the performance or observance on its part of any obligation under the Contract (other than an obligation to pay money) to the extent that such failure is attributable to a Force Majeure Event which is not caused by any fault, act or omission of the party seeking to rely upon the protection of this clause. The party affected by the Force Majeure Event must immediately notify the other party of the Force Majeure Event and each party must use its best efforts to resume performance in accordance with this Contract as soon as is reasonably practicable.

10.2. A Force Majeure Event may be relied upon by a party only to the extent that it continues to directly affect the performance or observance of the Contract by that party and the party will resume performance and observance of the Contract as soon as practicable after termination or abatement of the Force Majeure Event.

11. DISPUTES

11.1. If a dispute arises out of or relates to the Contract (**Dispute**), the parties must not start legal proceedings in relation to the Dispute unless it has complied with this clause 11.

11.2. If any Dispute arises, the party claiming that a Dispute has arisen must notify the other party, giving details of the Dispute.

11.3. During the 14-day period after a notice is given under clause 11.2 (or such longer period agreed to in writing by the parties) (**Initial Resolution Period**), each party must use its best efforts to resolve the Dispute.

11.4. If the parties are unable to resolve the Dispute by mutual negotiation during the Initial Resolution Period, the parties must refer to Dispute for mediation administered by the Resolution Institute before having recourse to arbitration or litigation. The mediation shall be conducted in accordance with the Resolution Institute Mediation Rules, and by an independent mediator appointed by agreement of the parties, or failing agreement within 7 days of the end of the Initial Resolution Period, by a person appointed by the Chair of the Resolution Institute (or the Chair's designated representative).

11.5. The parties agree the Consumer Guarantees Act 1993 will not apply where the Equipment or Services are used for commercial purposes.

11.6. Nothing contained in this clause 11 will:

- (a) deny any party the right to seek injunctive or urgent relief from an appropriate court where failure to obtain such relief would cause irreparable damage to the party concerned; or
- (b) apply where a party is entitled under the Contract to immediately terminate the Contract.

12. PRIVACY

12.1. The Customer acknowledges that Netlinkz may collect, use and store personal information about the Customer or its Personnel. The Customer understands this information will be collected, used and disclosed in accordance with the *Privacy Act 2020* and Netlinkz's Privacy Policy, which can be found at Privacy Policy - Netlinkz. The Customer consents to Netlinkz receiving or disclosing any information about the Customer (including adverse information) from or to any third party (including credit reporting agencies, debt collection agencies and attorneys) in connection with this Contract. The Customer acknowledges that its personal information may be disclosed to organisations outside Australia and it provides its consent for this to occur.



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13. CONFIDENTIALITY

13.1. Each party agrees to keep confidential, and not to disclose the other party's Confidential Information except where necessary under this Contract, or when it is required by law or by a government authority.

13.2. The Customer agrees that Netlinkz is allowed to refer to the Customer as a customer of Netlinkz in Netlinkz's marketing, sales, financial materials or reports. If the Customer objects to Netlinkz referring to the Customer as a Netlinkz customer publicly, the Customer must inform Netlinkz in writing.

13.3. Following the termination of this Contract, a party may require the return or destruction of its Confidential Information, provided that it is not required by law to be kept.

14. NOTICES

14.1. Any notice or other communication including any request, demand, consent or approval, to or by a party to the Contract:

- (a) must be in writing in English and addressed as stated in the details in the Quotation or as specified to the sender by any party by notice;
- (b) is regarded as being given by the sender and received by the addressee:
 - (i) if by delivery in person, when delivered to the addressee;
 - (ii) if by post in Australia, three days after the day of posting;
 - (iii) if by post outside of Australia, seven days after the day of posting; or
 - (iv) if by email, upon receipt by the recipient email server (even if received or categorised or filtered as unwanted email or spam), unless the sender receives an automated notice that delivery has failed,

but if the delivery or receipt is on a day which is not a Business Day or is after 4.00pm (addressee's time) it is regarded as received at 9.00am on the following Business Day.

15. GENERAL

15.1. The Contract is governed by and construed in accordance with the laws of New Zealand. The parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

15.2. Except as provided in clause 15.3, neither party may assign, novate or otherwise deal with or dispose of its rights, title or interest in, or obligations under, the Contract without the prior written consent of the other party.

15.3. Netlinkz may, without having to obtain prior written consent from the Customer:

- (a) engage subcontractors to carry out the whole of or any part of supply of the Equipment and/or Services; or
- (b) assign or novate its rights, title or interest in, or obligations under the Contract to a Related Company of Netlinkz.

15.4. The Customer must not resell any part of the Services.

15.5. The Customer must not use any of the Equipment or Services to commit an offence or any other unlawful act, or allow anybody else to do so.

15.6. If any provision of the Contract is held to be void, invalid or unenforceable it will be severed and the remaining provisions will not in any way be affected or impaired and the Contract will be construed so as to most nearly give effect to the intent of the parties as it was originally executed, provided that the provision is not fundamental to the parties' bargain.

15.7. A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise by a party of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing signed by the party giving the waiver.

15.8. The relationship between the parties is not agent, partner, joint venturer or employee and nothing contained in the Contract will constitute or be construed to be or create a partnership or joint venture, or give rise to any fiduciary relationship, between the parties.