

EAGLE TECHNOLOGY GROUP – GENERAL TERMS

1 WHERE THESE TERMS APPLY

- 1.1 **Application:** Unless otherwise agreed writing, these general terms (**General Terms**) apply to, and are incorporated into, any agreement (each an **Agreement**, which term includes these General Terms) in any form concerning the supply of any product (including hardware and software), and the licence to any software (**Products**) or services (**Services**) provided by or on behalf of Eagle Technology Group Limited (NZCN 249100) to the person (jointly and severally if more than one) (**Customer**) acquiring the Products or Services (together, the **Deliverables**).
- 1.2 **Acceptance:** In entering into any Agreement, specific contract for Deliverables, statement of work, or placing any order, the Customer accepts these General Terms.
- 1.3 **Precedence:** In the event of any inconsistency between the various parts of an Agreement, the following descending order of priority will apply:
- (a) any specific contract for Deliverables (including any schedules);
 - (b) any statement of work;
 - (c) any order confirmation;
 - (d) these General Terms.

2 EAGLE'S OBLIGATIONS

- 2.1 **Provision of Services:** Eagle will use reasonable endeavours to:
- (a) provide the Deliverables free from all material defects, and in all material respects in accordance with any specifications for the Deliverables included in the Agreement for those Deliverables; and
 - (b) provide the Services in a manner in accordance with professional standards of diligence, care and attention which would reasonably and ordinarily be expected of professionals in New Zealand engaged in the same type of undertaking in similar circumstances, using personnel with suitable skills, education and experience. Eagle does not guarantee that the Services will be continuous or error-free.
- 2.2 **Timelines:** Unless expressly agreed otherwise, stipulations as to time are not of the essence. Eagle will use reasonable endeavours to provide the Deliverables in accordance with any timelines or milestones agreed in writing by the parties but will not be liable for any loss or damage arising from any delay, however caused, except to the extent that such delay arises solely due to an intentional or negligent act or omission of Eagle.

3 CUSTOMER'S OBLIGATIONS

- 3.1 **Access:** If Eagle is to perform the Services at the Customer's premises, the Customer will provide the following at the Customer's expense:
- (a) access to and the right to use the Customer's facilities reasonably necessary for Eagle to perform its obligations under the Agreement, including Internet access, computer systems and other IT infrastructure;
 - (b) access to and sufficient time with the Customer's technical, management and other personnel necessary for Eagle to perform its obligations under the Agreement;
 - (c) a safe working environment to all Eagle personnel in compliance with all relevant legislation and regulations, including the Health & Safety at Work Act 2015,
- and Eagle will use all reasonable efforts not to interfere with or adversely affect the Customer's operations.
- 3.2 **Defective Deliverables:** If any Deliverables or part of them are damaged or defective, the Customer must notify Eagle in writing

within 15 working days of delivery or the Customer will be deemed to have accepted the Deliverables as is.

4 PRODUCTS

- 4.1 **Risk:** Risk of loss of, or damage to, any Products purchased by the Customer will pass to the Customer upon delivery, which takes place when the goods are delivered to the delivery address specified by the Customer or the Customer or its agent takes possession of the Products (as applicable).
- 4.2 **Title:** Notwithstanding the passing of risk in the Products or any other provision of the Agreement, until Eagle receives payment in full for the Products and all other amounts owing to Eagle:
- (a) title and property in the Products remain vested in Eagle and will not pass to the Customer;
 - (b) the Customer will hold the Products as Eagle's fiduciary agent and bailee, keep the Products apart, not part with possession of the Products and, if requested when payment is overdue, deliver the Products to Eagle or its nominee.
- 4.3 **End User Licence:** By using any Product that is software, the Customer accepts the terms and conditions of any end user licence agreement relating to and provided with that software, and will comply with all those terms and conditions.

5 CHARGES AND PAYMENT

- 5.1 **Charges:** The amounts payable by the Customer to Eagle for Deliverables (**Charges**) will be calculated at Eagle's standard prices/rates from time to time.
- 5.2 **Notice of Variation:** Except where specifically agreed between the Customer and Eagle in any specific contract for Deliverables, statement of work, or order confirmation, Eagle may vary any regular on-going Charges for Services by giving the Customer 20 working days' prior notice.
- 5.3 **Increased Prices:** Prior to delivery Eagle may vary any quote or estimate of Charges Eagle has provided to the Customer to compensate Eagle for:
- (a) any increases in the cost price to Eagle of the Product(s) or provision of Services. Where this applies, the Customer will be notified by Eagle in advance and given the right to change or cancel the supply;
 - (b) any adverse exchange rate movement.
- 5.4 **Estimates and Quotes:** All indications of price are estimates only unless clearly labelled as a quote. Quotes are valid only for the period specified on the quote or, if no period is specified, for 10 working days.
- 5.5 **Invoices and Payment:** Eagle will invoice on the despatch of Products and/or supply of Services, provided that the Customer may be required by Eagle, in Eagle's sole discretion, to pay for any Products on invoicing by Eagle in advance of the Products being ordered by Eagle from its suppliers or in advance of delivery to the Customer. Other costs will be invoiced as they are incurred. The Customer will make payment on or before the date specified in the relevant invoice or (if not specified) by the 20th day of the month following the date of Eagle's invoice. Time for payment is of the essence.
- 5.6 **GST & Other Taxes and Duties:** The Charges are exclusive of goods and services tax (**GST**) and other taxes (excluding income tax), duties and levies levied or assessed in connection with the supply of the Deliverables or the payment of the Charges, unless otherwise expressly stated. The Customer will pay to Eagle all such GST duties, taxes, levies or fees.

5.7 Interest on Late Payment: If any Charge is in arrears, the Customer will pay to Eagle interest calculated and compounded daily on the outstanding sum from the date payment was due until the actual date of payment at the rate of 5% per annum above the then current interest rate on business overdraft facilities charged by Eagle's trading bank. If any late payment is the subject of a genuine dispute then the Customer will only pay interest under this clause 5.7 on the amount that is ultimately determined to be payable by the Customer whether by agreement, dispute resolution process or Court order.

5.8 Disputed Invoices: If the Customer has a genuine dispute in relation to all or any portion of an invoice submitted by Eagle, it may withhold payment of the amount subject to the dispute. Either party may refer the disputed payment for dispute resolution set out in these General Terms. The Customer will pay the undisputed amount when it becomes due and Eagle will continue to perform its obligations under the Agreement while the dispute is being resolved.

5.9 No Set Off: The Customer may not set off any monies claimed to be owed by Eagle to the Customer against sums due to Eagle.

5.10 Costs: All fees and expenses incurred by Eagle (including solicitor-client legal fees) in connection with the enforcement of the Agreement because of a default of any provision of the Agreement by the Customer are payable by the Customer.

6 CONFIDENTIALITY

6.1 Confidentiality: Each party agrees to keep the Confidential Information of the other party disclosed to it strictly confidential and to use that Confidential Information solely for the purpose of performing its obligations or obtaining the benefits under the Agreement and to immediately notify the other party of any breach or possible breach of confidentiality. Each party will be responsible and liable for the acts and defaults of its directors, employees, contractors or agents (**Personnel**) and advisers in respect of the other party's Confidential Information.

6.2 Confidential Information: For the purposes of these General Terms, **Confidential Information** means all information, know-how or material in any form relating to, or confidential or proprietary to, or provided by or on behalf of, a party (**Owner**) which becomes known by or is provided to the other party (**Recipient**) as a result of the course of dealings between them in relation to the Agreement, is designated by a party as confidential or which the recipient ought reasonably know is confidential, including any non-public, commercially sensitive or secret information relating to the Owner's business, trade secrets, data, operations, customers, stakeholders, activities, planning, investigations, products, services, research and development and the contents of the Agreement, but excludes any information to the extent the recipient can show the relevant information:

- (a) is now or becomes publicly available (other than through breach of an obligation of confidentiality); or
- (b) is required by law or pursuant to the listing rules of any applicable stock exchange to be disclosed, provided that prior to making the disclosure the Recipient has given the Owner notice of the request for disclosure.

7 INTELLECTUAL PROPERTY

7.1 Definitions: For the purposes of these General Terms:

- (a) **Developed IP** means all Intellectual Property (excluding any Eagle Materials) forming part of the Deliverables that are specifically developed by Eagle or its Personnel solely for the Customer in connection with the performance of the Agreement;

- (b) **Eagle Materials** means all Intellectual Property owned by or licensed to Eagle (and any derivatives and modifications thereof), including software, source code, development tools and routines other than that which has been developed after the date of the Agreement solely and specifically for the Customer under the Agreement;

- (c) **Intellectual Property** means all worldwide intellectual property and associated rights and interests (including common law rights and interests) in any jurisdiction (whether protectable by registration or not) including:

- (i) copyright, patents, trade marks, trade names, service marks, registered designs, circuit layouts, domain names, symbols and logos and all goodwill rights associated with such works, layouts;
- (ii) patent applications and applications to register trade marks, service marks and designs; and
- (iii) know-how, Confidential Information, ideas, concepts, tools, techniques, computer program code (being both object code and source code unless expressly stated otherwise), data, inventions, discoveries, developments, trade secrets, information and logical sequences (whether or not reduced to writing or other machine or human readable form).

7.2 Developed IP: Developed IP will, unless expressly provided otherwise in the Agreement, be the property of the Customer, provided that the Customer will have no ownership or other rights in or with respect to any Developed IP (or portion) until full payment has been made to Eagle for the Services relating to that Developed IP.

7.3 Eagle Materials: The Customer acknowledges that the Eagle Materials constitute primary infrastructure in Eagle's business and any Eagle Materials used by Eagle or its Personnel in the provision of the Deliverables (whether or not incorporated into or made a part of any of the Deliverables) remain the exclusive property of Eagle. Except as expressly agreed in writing by the parties, the Customer will not copy, modify, distribute or transfer (by any means), display, sublicense, rent, reverse engineer, decompile (other than as permitted by law), or disassemble the Eagle Materials.

7.4 Licence to Use Eagle Materials: To the extent of Eagle's own rights to them, Eagle grants to the Customer a perpetual, New Zealand wide, royalty-free, non-exclusive, non-transferable irrevocable licence to use any Eagle Materials supplied by Eagle incorporated into, made a part of, or necessary for the use of any of the Deliverables, provided the Customer is not in breach of its payment obligations under the Agreement. Eagle may suspend or terminate the licence granted under this clause 7.4 on any suspension under clause 11.3 or any termination of the Agreement by Eagle due to a breach by the Customer of its payment obligations under the Agreement.

7.5 Residuals: Eagle and its Personnel will be free to use and employ their general skills, know-how, methods, techniques, or skills gained or learned during the provision of any Services (if they have general applicability beyond the specific Services delivered under the Agreement), so long as they apply that information without disclosure of any Confidential Information of the Customer and without unauthorized use or disclosure of the Customer's Intellectual Property.

7.6 Third Party Properties: The Customer will provide, at the Customer's expense, all necessary consents and licences for Eagle to use the Customer's and third party products and services which are necessary for the successful provision of the Deliverables which are not specifically identified in the Agreement as to be provided by Eagle.

8 RELATIONSHIP

- 8.1 Independent Contractor:** The relationship between the Customer and Eagle is, and will be for all purposes, that of a company and independent contractor, and nothing in these General Terms or any Agreement will be taken as constituting any other relationship, including an agency, joint venture or partnership .
- 8.2 Sub-contracting Permitted:** Subject to the prior approval of the Customer, Eagle may sub-contract the provision of the Deliverables. The sub-contracting will not relieve Eagle from its responsibility for performance of the Agreement, and (to the extent the Customer does not have a direct claim against the sub-contractor) Eagle will be responsible for the acts of its sub-contractor.

9 LIABILITY

- 9.1 Exclusion of Liability:** In no event will the measure of damages against Eagle or the Customer for any breach of the Agreement, or any negligence or other action or contravention of any statutory or common law include, nor will Eagle or the Customer be liable for:
- (a) any breach of the Agreement to the extent that the breach is attributable to the negligence, misconduct or breach of the other party; or
 - (b) any loss or damage that results from a Force Majeure Event; or
 - (c) any loss of profit or revenue, exemplary damages, deletion or corruption of electronically or digitally stored information, or without limiting the foregoing, any indirect or consequential loss or damage howsoever described or claimed.
- 9.2 Limitation of Liability:** The Customer must notify Eagle of any claim as soon as possible, and take reasonable steps to minimise loss. Except as required by applicable law, Eagle's liability will end on the expiry of any specified warranty period or, if there is no specified warranty period, 12 months from delivery. If Eagle's liability is not excluded under the Agreement, to the maximum extent permitted by law, Eagle's liability in relation to the supply of Deliverables is limited to any one or more of the following as Eagle, having consulted with the Customer, considers appropriate:
- (a) in the case of Products:
 - (i) the replacement of the Product or the supply of equivalent Product;
 - (ii) the repair of the Product;
 - (iii) the payment of the cost of replacing the Product or acquiring equivalent Product;
 - (iv) the payment of the cost of having the Product repaired.
 - (b) In the case of Services:
 - (i) the supplying of the Services again; or
 - (ii) the payment of the cost of having the Services supplied again.

To the extent the foregoing limitation does not apply or is not effective in accordance with its terms, then in no event will the aggregate maximum liability of Eagle to the Customer arising from all breaches of the Agreement, in tort (including negligence), statutory breach or otherwise howsoever, exceed the total amounts paid by the Customer to Eagle under the applicable Agreement to which the breach or action relates over the 12 months preceding the Customer's claim.

- 9.3 No Third Party Claim:** Eagle is not liable to any party other than the Customer in connection with the Agreement or the Deliverables, except in connection with any valid claim by that third party that the Eagle Materials or Developed IP used in providing the Deliverables infringes that third party's intellectual property rights

(**Third Party Valid IP Claim**). Eagle indemnifies the Customer from and against any Third Party Valid IP Claim.

- 9.4 Responsibility for Results:** The Customer will be solely responsible for the results obtained from use of the Deliverables (except to the extent any unexpected results arise as a result of any negligence, misconduct or breach by Eagle in providing the Deliverables).
- 9.5 Manufacturer's Warranties:** Eagle will use reasonable endeavours to pass on to the Customer the benefit of any third party warranty for Products provided by Eagle under the Agreement, to the extent permitted under the applicable third party warranty. The Customer acknowledges that most third party manufacturer's warranties require the Customer to return any defective Products to the manufacturer's service centre and the Customer will be responsible for the costs of transport. Unless expressly agreed otherwise, to the extent permitted by law, Eagle does not provide any warranty for Product created, manufactured or developed by a third party and is not liable to the Customer in any way whatsoever for any defect in Products created, manufactured or developed by a third party. Eagle strongly recommends that the Customer detach and retain the third party manufacturer's warranty card on delivery of the Products.
- 9.6 Exclusion of Warranties:** All representations, terms, warranties, guarantees or conditions (whether implied or by statute, common law or custom of the trade or otherwise) in respect of any Deliverables supplied or to be supplied in accordance with the Agreement and not expressly included in the Agreement are expressly excluded to the maximum extent permitted by law, including implied warranties, guarantees or conditions of merchantability and fitness for a particular purpose. The Customer accepts that to the extent that anything supplied to it by Eagle under an Agreement is for the purposes of a business, the Consumer Guarantees Act 1993 does not apply.
- 9.7 Customer's Acknowledgement:** The Customer acknowledges that the Deliverables are purchased relying solely upon the Customer's skill and judgment and not on Eagle's representations or other conduct, other than those express warranties (if any) given by Eagle under an Agreement. The purpose of this clause 9.7 is to expressly contract out of the Fair Trading Act 1986 to the maximum extent possible, and the parties agree that it is fair and reasonable to do so.

10 DISPUTE RESOLUTION

- 10.1 Dispute Resolution Process:** If a dispute arises out of or relates to the Agreement including any claim in tort, in equity or pursuant to any statute (**Dispute**) a party may not commence any proceedings relating to the Dispute unless it has complied with the following clauses of this section, except where the party seeks urgent interlocutory relief.
- 10.2 Good Faith Resolution:** A party to the Agreement claiming that a Dispute has arisen must give written notice to the other party specifying the subject matter and details of the Dispute and the relief sought. After written notice of Dispute being given, the parties must then for a period of 20 working days endeavour in good faith to resolve the Dispute expeditiously using informal dispute resolution techniques (such as negotiation, mediation, expert evaluation or determination or similar techniques) as agreed by them.
- 10.3 Other Remedies:** If the Dispute is not resolved within 20 working days of the written notice of Dispute being given the parties are free to pursue their legal remedies as they choose.

11 TERMINATION

- 11.1 Termination By Either Party:** Either party may terminate the Agreement immediately by notice in writing if the other party:

- (a) assigns its rights or obligations under the Agreement otherwise than in accordance with these General Terms;
- (b) if an application to wind up the other party has been made;
- (c) if a liquidator, receiver or administrator or statutory manager has been appointed to all or substantially all of the property of the other party; or
- (d) is insolvent or presumed to be insolvent under any applicable laws.

11.2 Termination by Non-Defaulting Party: If one party defaults in a material manner in the performance of any of its obligations under the Agreement and:

- (a) the default is capable of being remedied, and, within 20 working days of notice by the non-defaulting Party specifying the default, is not remedied; or
- (b) the default is not capable of being remedied,

the non-defaulting Party may by notice in writing immediately terminate, or at its sole discretion, temporarily suspend the operation of the Agreement, until the default is remedied.

11.3 Suspension by Eagle: If the Customer defaults in the payment of any sum due, Eagle may, at its discretion and after providing written notice of non-payment by the Customer and allowing the Customer not less than 5 working days to make good the payment, suspend the provision of all or any part of the Deliverables under the Agreement, and under any other Agreement between Eagle and the Customer, immediately by notice in writing to the Customer after the lapse of the notice period. Any such suspension by Eagle will not affect any other right or remedy of Eagle, or any obligation or liability of the Customer under the relevant Agreement. For the avoidance of doubt, this suspension will not apply to any amounts disputed in accordance with clause 5.8.

11.4 Consequences of Termination: Following the expiry or termination of all or any part of the Agreement:

- (a) all Charges and other payments outstanding or incurred prior to the date of expiry or termination under the terminated part of the Agreement will become immediately due and payable;
- (b) each party will either promptly deliver to the other or, at the other party's option, destroy and certify the destruction of, all of the other party's property and Confidential Information (in any reasonable format requested by the other party) under the terminated part of the Agreement, as and when reasonably requested in writing by the other party;
- (c) except in the case of termination by Eagle for cause, Eagle will upon payment of applicable Charges, promptly deliver to the Customer all work in progress on any Deliverable in Eagle's possession or control under the terminated part of the Agreement;
- (d) except where termination is due to default of the Customer, the Customer will be entitled to a refund of any amounts paid in advance for Services or Deliverables not yet provided as at the date of termination or expiry (less any costs already incurred by Eagle in connection with the same), subject to set-off against any outstanding amounts owed to Eagle.

11.5 Accrued Rights: The expiry or termination of all or any part of an Agreement will be without prejudice to the rights of the parties accrued up to the date of such expiry or termination.

12 FORCE MAJEURE

12.1 Definition: For the purpose of these General Terms, **Force Majeure Event** means any Act of God or act of nature, fire, smoke damage, earthquake, storm, flood, water damage, or landslide; unavoidable accident, explosion, public mains electrical supply failure, or

nuclear accident; sabotage, riot, civil disturbance, insurrection, epidemic, national emergency (whether in fact or law) or act of war (whether declared or not); requirement or restriction of, or failure to act by, any government, semi-governmental or judicial entity; or any other cause beyond the reasonable control of the party concerned; but does not include strike, lockout, work stoppage or other labour dispute or a lack of funds for any reason or any other delay or inability in relation to any payment.

12.2 No Liability: Notwithstanding any other provision of the Agreement, neither party will be liable for any failure or delay in complying with any obligation under any Agreement (excluding any payment obligation) if :

- (a) the failure or delay arises from a Force Majeure Event;
- (b) that party, on becoming aware of the Force Majeure Event, promptly notifies the other party in writing of the nature of, the expected duration of, the obligation(s) affected by, and the steps being taken by that party to mitigate, avoid or remedy, the Force Majeure Event; and
- (c) that party uses its best endeavours to:
 - (i) mitigate the effects of the Force Majeure Event on that party's obligations under the Agreement;
 - (ii) perform that party's obligations which are not affected by the Force Majeure Event; and
 - (iii) perform that party's obligations under the Agreement on time despite the Force Majeure Event.

12.3 Resumption of Performance: Performance of any obligation affected by a Force Majeure Event will be resumed as soon as practicable after the termination or abatement of the Force Majeure Event.

13 PRIVACY

13.1 Use of Personal Information: The Customer and each guarantor (if any) acknowledge and agree that Eagle may collect, retain and use information that is Personal Information as defined in the Privacy Act 2020 for the purpose's outlined in Eagle's privacy policy (which can be found on our website at www.eagle.co.nz), including, but not limited to, assessing their creditworthiness, disclosing information to any credit provider or any credit reporting agency, or to any debt collection agency, and/or providing information about products and services that Eagle thinks might be of interest to them.

13.2 Marketing Material: If the Customer or a guarantor (if any) asks Eagle not to provide them with marketing material relating to Eagle's Products or Services, Eagle will comply with that request.

13.3 Access to and Correction of Information: The Customer and guarantors (if any) may ask Eagle to show them the Personal Information Eagle holds about them and to make corrections to it. If there is a legal reason why Eagle cannot provide a person with access to their Personal Information, or if Eagle does not agree with the requested corrections, Eagle will notify that person accordingly.

14 GENERAL

14.1 Assignment by Eagle: Eagle must not assign any of its rights or obligations under any Agreement except with the prior written consent of the Customer, not to be unreasonably withheld or delayed.

14.2 Assignment by the Customer: The Customer must not assign any of its rights or obligations under any Agreement except with the prior written consent of Eagle, which will not be unreasonably delayed or withheld. A change in control or in the beneficial ownership of the Customer is deemed to be an assignment.

- 14.3 Waiver:** No waiver of any breach of the Agreement by either party will be effective except an express waiver in writing signed by the party against whom enforcement of the waiver is sought. A waiver of either party's rights or remedies due to any particular breach of any provision of the Agreement will not be construed as a waiver of any other breach of the same or any other provision. Termination of an Agreement will not operate as a waiver of any rights, powers or remedies of either party in respect of any breach giving rise to such termination or otherwise arising under that Agreement prior to termination.
- 14.4 Notices:** All notices to be given under an Agreement must be in writing and will be properly given if sent by email or prepaid post to the last address and contact details of the addressee provided by the addressee to the other party. Any notice sent pursuant to this clause 14.4 will be deemed to have been received on the third working day following posting or on confirmation of successful transmission (as applicable).
- 14.5 Unenforceability:** If any provision of these General Terms or any Agreement is held to be unenforceable under any law, that provision will be deemed modified to the extent necessary to comply with such law, or if the modification would be impracticable, will be deemed deleted and none of the other rights or obligations in these General Terms or the Agreement (as the case may be) will be affected or prejudiced.
- 14.6 Entire Understanding:** The Agreement embodies the entire understanding of the parties relating to the matters referred to in it. The Agreement supersedes all prior understandings and agreements with respect to the matters contemplated in the Agreement. Part 3 (Sale of Goods) of the Contract and Commercial Law Act 2017 will not apply.
- 14.7 Survival:** All the obligations contained in these General Terms or the Agreement which are by their nature intended to and are capable of surviving the termination of an Agreement will continue in full force and effect according to their terms.
- 14.8 Amendments:** Eagle reserves the right to change these General Terms at any time, provided that no changes will apply to any existing Agreement unless the Customer agrees. If the Customer makes a further request for Eagle to provide Deliverables, the General Terms (as amended) will apply to each subsequent supply of Deliverables.
- 14.9 Counterpart Copies:** An Agreement may be signed in two or more counterparts (including scanned email copies), all of which when taken together will constitute one and the same document and a binding and enforceable agreement between the parties.
- 14.10 Governing Law:** These General Terms and each Agreement will be governed by and construed in all respects in accordance with the laws of New Zealand. Subject to clause 10, the parties submit to the exclusive jurisdiction of the Courts of New Zealand.