

Future IT's Standard Terms and Conditions of Trade (2020)

- 1. DEFINITIONS**
- 1.1 "FIT" shall mean FUTUREIT (NZ) LIMITED, or any agents, contractors or employees thereof.
- 1.2 "Customer" shall mean the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing products from FIT.
- 1.3 "Products" shall mean all goods, products, services or advice provided by FIT to the Customer, and shall include without limitation the supply of computer hardware, components, peripherals, accessories and associated software and all charges for labour and work, hire charges, insurance charges, or any fee or charge associated with the supply of products by FIT to the Customer.
- 1.4 "Price" shall mean the cost of the products as agreed between FIT and the Customer subject to clause 6 of this contract.
- 2. COUNTERPARTS AND FACSIMILE SIGNATURE**
- 2.1 This agreement may be executed in two or more counterparts, each of which shall be deemed original, but all of which together shall constitute the same instruments. The transmission by facsimile by a party to the other party of a signed counterpart copy of this agreement, or facsimile of this agreement, shall be deemed proof of signature of the original and the signed facsimile so transmitted shall be deemed an original.
- 3. ACCEPTANCE**
- 3.1 Any instructions received by FIT from the Customer for the supply of products including products that FIT have ordered or are required to order from overseas shall constitute a binding contract and acceptance of the terms and conditions contained herein.
- 3.2 The Customer is obliged to inform FIT if it sells its business or if there is any change to its ownership structure, shareholding or proprietorship. Such a change will require a new application to be made to FIT. In the absence of such an application, the Customer remains liable for any payment.
- 4. TERMS**
- 4.1 This agreement shall remain in force until terminated by either party by notice in writing. Termination of this agreement shall not prejudice FIT's accrued rights and remedies against the Customer.
- 4.2 This agreement constitutes the entire agreement between the parties; it supersedes and extinguishes all earlier negotiations, understandings and agreements, whether oral or written, between the parties relating to the sale and purchase of the goods.
- 5. COLLECTION AND USE OF INFORMATION**
- 5.1 The Customer authorises FIT to collect, retain and use any information about the Customer, or for the purpose of assessing the Customer's credit worthiness, enforcing any rights under this contract, or marketing any products and services provided by FIT to any other party.
- 5.2 The Customer authorises FIT to disclose any information obtained to any person for the purposes set out in clause 5.1.
- 5.3 Where the Customer is a natural person the authorities under clauses 5.1 and 5.2 are authorities or consents for the purposes of the Privacy Act 1993.
- 5.4 The Customer agrees not to disclose any information concerning the products, pricing, business affairs or other trade secrets regarding FIT products.
- 5.5 The Client agrees that FIT may refer to the Client's name in discussions with other Clients. The Client agrees that generic non-proprietary information about the Client's IT systems makeup may be discussed with other parties including Suppliers and other Customers for the means of supporting the Client and sharing information between FIT Customers.
- 6. PRICE**
- 6.1 Where no price is stated in writing or agreed to orally the products shall be deemed to be sold at the current amount as such products are sold by FIT at the time of the contract.
- 6.2 FIT may alter its price without prior notice.
- 7. PAYMENT**
- 7.1 Payment for products shall be made:
- 7.1.1 In cash before delivery ("the due date");
- 7.1.2 Where agreed by FIT in writing following a credit application, FIT may extend credit to the Customer wherein payment is to be made in full within seven (7) days or fourteen (14) days of supply, or by the 20th of the month following the date of the invoice ("the due date").
- 7.2 Interest may be charged on any amount owing after the due date at the rate of 2% per month or part month.
- 7.3 Any expenses, disbursements and legal costs incurred by FIT in the enforcement of any rights contained in this contract shall be paid by the Customer, including any reasonable solicitor's fees or debt collection agency fees.
- 7.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
- 7.5 On ordering on credit FIT may require the payment of a deposit of 10% to 50%.
- 7.6 FIT may refuse to supply any further goods or services and / or grant further extension of credit while any overdue amounts owing to FIT remain unpaid.
- 7.7 FIT may withdraw credit facilities at any time without notice.
- 8. QUOTATION**
- 8.1 Where a quotation is given by FIT for products:
- 8.1.1 The quotation shall be valid for five (5) days from the date of issue; and
- 8.1.2 The quotation shall be exclusive of Goods and Services Tax unless specifically stated to the contrary.
- 8.2 All products are subject to availability and price fluctuations beyond FIT's control.
- 8.3 Where products are required in addition to the quotation the Customer agrees to pay for the additional cost of such products.
- 9. RISK**
- 9.1 The products remain at FIT's risk until the delivery to the customer, but when title passes to the Customer pursuant to clause 10.1 of this contract the products are at the Customer's risk whether delivery has been made or not.
- 9.2 Delivery of products shall be deemed complete when FIT gives possession of the products directly to the Customer or possession of the products is given to a carrier, courier, or other Bailee for purposes of transmission to the Customer.
- 9.3 The time agreed for delivery shall not be an essential term of this contract unless the Customer gives written notice to FIT making time of the essence.
- 10. TITLE**
- 10.1 If the products are ascertained and in a deliverable state, title in the products passes to the Customer when the Customer has made payment for all products supplied by FIT.
- 10.2 Where the Customer has not paid for any products in its possession property in such products shall remain with FIT and:
- 10.2.1 The products shall be held by the Customer as Bailee; and
- 10.2.2 If the products are attached, fixed, or incorporated into any property of the Customer, by way of any manufacturing or assembly process by the Customer or any third party, title in the products shall remain with FIT until the Customer has made payment for all products, and where those products are mixed with other property so as to be part of or a constituent of any new products, title to these new products shall be assigned to FIT as security for the full satisfaction by the Customer of the full amount owing between FIT and Customer.
- 10.3 The Customer gives irrevocable authority to FIT to enter any premises occupied by the Customer, at any reasonable time, to remove any products not paid for in full by the Customer. FIT shall not be liable for costs, damages or expenses or any other losses incurred by the Customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever.
- 11. DISPUTES**
- 11.1 No claim relating to products will be considered unless made within forty-eight (48) hours of delivery.
- 12. LIABILITY**
- 12.1 The Consumer Guarantees Act 1993, the Commerce Act 1986, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon FIT which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on FIT, FIT's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- 12.2 Except as otherwise provided by clause 12.1 FIT shall not be liable for:
- 12.2.1 Any loss or damage of any kind whatsoever including consequential loss whether suffered or incurred by the Customer or another person and whether in contract, or tort, or otherwise and whether such loss or damage arises directly or indirectly from services provided by FIT to the Customer; and
- 12.2.2 The Customer shall indemnify FIT against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of FIT or otherwise, brought by any person in connection with any matter, act, omission, or error by FIT, its suppliers, agents or employees in connection with the services.
- 13. RETURN OF GOODS**
- 13.1 No products will be accepted for return without prior written authorisation from FIT.
- 13.2 FIT will only consider accepting the return of the products provided:
- 13.2.1 Prior approval is obtained;
- 13.2.2 Products for return must quote a return authorisation number (which has to be applied for) and must be accompanied by a copy of the invoice;
- 13.2.3 Products approved for return must be in the same resalable condition and in the manufacturer's original container and undamaged. FIT reserves the right to reject products not conforming to this condition;
- 13.2.4 Products accepted for return are subject to a restocking fee of \$50.00 or 20% of the original invoice value whichever is the greater;
- 13.2.5 Return freight and insurance costs must be prepaid by the Customer;
- 13.2.6 All other conditions set out in FIT's return authorisation policy are complied with.
- 13.2.7 Any refund to the Customer will be in the form of a credit note for the refund due.
- 13.3 Any returns of product supplied will be subject to the returns policy of the manufacturer or importer of the product. FIT is not able to enhance terms available.
- 14. WARRANTY**
- 14.1 Any written warranty provided by FIT also forms part of this contract. FIT will only provide warranty services in respect of products that were supplied by FIT.
- 14.2 The Customer is not entitled to rely on, and FIT makes no warranties in respect of:
- 14.2.1 The continuous availability of communications facilities to the Customer (even where required for their particular services or support); or
- 14.2.2 Problem resolution; or
- 14.2.3 Any support or labour being interrupted or error-free.
- 15. CONSUMER GUARANTEES ACT**
- 15.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires products from FIT for the purposes of a business in terms of section 2 and 43 of that Act.
- 15.2 Where in any case the Customer is a "Supplier" then:
- 15.2.1 The Customer shall notify any "consumer" prior to any sale of any defects or limitation in the products and/or any common purpose for which the products are not suitable;
- 15.2.2 The Customer shall, to the extent that the consumer is acquiring goods for the purposes of a business contract out of the provisions of the Consumer Guarantees Act to the extent limited by law and shall not give or make any undertaking, assertion or representation to such Customers in relation to the goods without FIT's prior approval in writing.
- 15.2.3 Where the Customer does not comply with the provisions of this clause it hereby agrees to indemnify FIT against any loss FIT may suffer in consequence of such breach including all solicitor client legal costs and disbursements in defending any action which may be brought against FIT.
- 15.2.4 Nothing in these terms is intended to have the effect of contracting out of the provisions of the CGA except to the extent permitted by that Act. Where it is mandatory that the GGA applies, these terms are modified to the extent which is necessary to give effect to that intention.
- 16. GENERAL LIEN**
- 16.1 The Customer agrees that FIT may exercise a general lien against any products or any property belonging to the Customer that is in the possession of FIT for all sums outstanding under this contract and any other contract to which the customer and company are parties.
- 16.2 If the lien is not satisfied within 7 days of the due date FIT may having given notice of the lien at its option either:
- 16.2.1 Remove such products and store them in such a place and in such a manner as FIT shall think FIT and proper and at the risk and expense of the Customer; or
- 16.2.2 Sell such products or part thereof upon such terms as it shall think FIT and apply the proceeds in or towards discharge of the lien and costs of sale without being liable to any person for damage caused.
- 17. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES**
- 17.1 If the Customer is a Company or Trust, the Director(s) or Trustee(s) signing the FIT credit application form, in consideration for FIT agreeing to supply products and grant credit to the Customer, also sign in their personal capacity and jointly and severally personally guarantee and undertake to FIT the payment of any and all other monies now or hereafter owed by the Customer to FIT. Any personal guarantee made by any party shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in the credit application. The Guarantors and Customer shall be jointly and severally liable under the terms and conditions of the FIT credit application.
- 18. PERSONAL PROPERTY SECURITIES ACT ("PPSA")**
- 18.1 Upon signing these terms the Customer acknowledges that:
- 18.1.1 These terms are a security agreement for the purpose of section 36 of the PPSA; and
- 18.1.2 A security interest is taken in all goods previously supplied by FIT to the Customer (if any) and all goods that will be supplied in the future by FIT to a Customer during the continuance of the parties relationship.
- 18.2 The Customer undertakes to:
- 18.2.1 Enter into a General Security Agreement (as approved by the Auckland District Law Society), and to sign any further documents and/or provide any further information which FIT may reasonably require to register a financing statement or financing charge statement on the Personal Properties Securities Register;
- 18.2.2 Give FIT not less than 14 days prior written notice of any proposed change in the Customer's name and will use its best endeavours to ensure that a financing charge statement is registered disclosing its new name; and
- 18.2.3 Immediately advise FIT of any material change in its business practices of selling the goods which would result in a change of the nature of the proceeds derived from such sales.
- 18.3 Unless otherwise agreed to in writing by FIT, the Customer waives its rights to receive a verification statement in accordance with Section 1.
- 19. CANCELLATION**
- 19.1 FIT shall, without any liability, and without any prejudice to any other right it has in law or equity, have the right by notice to suspend or cancel in whole or in part any contract for the supply of products to the Customer if the Customer fails to pay any money owing after the due date or the Customer commits an act of bankruptcy as defined in section 19 of the Insolvency Act 1967.
- 19.2 Any cancellation or suspension under clause 16.1 of this agreement shall not affect FIT's claim for money due at the time of cancellation or suspension or for damages for any breach of any terms of this contract or the Customer's obligations to FIT under this contract.
- 20. RESTRAINT OF TRADE**
- 20.1 The Customer agrees that they will not during the term of this agreement, nor for a period of six (6) months thereafter, directly or indirectly approach, offer, contact or otherwise deal with FIT's employees, agents or subcontractors in respect of substitutions of FIT's services, other than with the prior written consent of FIT.
- 21. MISCELLANEOUS**
- 21.1 The Customer shall not assign all or any of its rights or obligations under this contract without the written consent of FIT.
- 21.2 FIT shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 21.3 Failure by FIT to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations FIT has under this contract.
- 21.4 Where the terms of this contract are at variance with the order or instruction from the Customer, this contract shall prevail.
- 21.5 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected. Prejudiced or impaired.
- 21.6 The Customer is responsible for providing FIT's Engineers with free onsite parking otherwise any costs incurred for parking will be on charge.