

Chillisoft Terms of Trade

The terms of trade set out below govern all of the supplies of Products from Chillisoft Ltd ("Chillisoft", "we", "us") to the customer ("you"). They will replace all earlier Chillisoft terms of trade and any conditions contained in any document used by you and purporting to have contractual effect. Your ordering of any Products from Chillisoft indicates your acceptance of these terms of trade.

1. General

1.1 In these conditions, "**Software**" includes all relevant documentation, manuals, printed and written matter; "**Supplier**" means Chillisoft's suppliers; "**Products**" means Software and other goods or services of any kind which are supplied by Chillisoft to you primarily for resupply by you; "**Website**" means any internet website owned and operated by Chillisoft.

1.2 Where you purchase any Products presented on the Website or otherwise use the Website, the Website trading terms shall apply. In the event of any conflict between these terms of trade and the Website trading terms, these terms of trade shall prevail. Where you acquire goods or services supplied by other parties through the Website or through links on the Website, you do so on the condition that Chillisoft is not liable to you in any way for those goods or services.

2. Price and Orders

2.1 Prices may be altered without notice.

2.2 We will accept orders from you by phone, fax, email, or via our website(s).

2.3 Chillisoft reserves the right to refuse to accept any order or any part of an order, and to deliver goods by instalments, in which case each instalment will comprise a separate contract and shall be paid for as if it were a separate order.

3. Payment

3.1 Unless we have agreed to extend credit to you, you must pay in cash or by credit card before supply.

3.2 Where we have agreed in writing to extend credit to you, you must pay in full within 7 days of supply, or (only if we have agreed in writing) by the 20th of the month following the emailing of an invoice. Your payment is made only when funds have fully cleared through the banking system into our bank account.

3.3 We have sole discretion to determine the amount of credit we will extend to you at any time.

3.4 You agree to pay for the Products in full without deduction or setoff and to pay goods and services tax and any other government duties, levies or taxes in respect of the Products.

3.5 If payment is not made in full by the due date, we are entitled to charge you interest on the unpaid overdue balance at the rate of 2% per month, compounding monthly on the unpaid balance owing on the first day of each month until payment in full is received by us, and we may charge you costs (including collection costs and legal costs on a solicitor-client basis) and suspend delivery of further Products or performance of further services until the account is paid.

3.6 If payment is not made in full by the due date for software licences and services we may suspend access to updates, support and other ongoing services relating to the unpaid invoice(s), and advise the relevant end-users of the reason for such suspension.

3.7 Notwithstanding clauses 3.2 and 3.3 above, all payments shall immediately become due to us if you refuse to accept delivery of any Products, if we reasonably believe that the information which you have given us in your application for credit is incorrect or no longer correct and you have failed to give us correct information satisfactory to us within 5 days of our request, if you sell or otherwise dispose of any goods which have not been paid for without our consent, if you become insolvent, commit any act of bankruptcy, if a receiver, liquidator or statutory manager is appointed over any of your assets or undertaking, if you make or attempt to make an arrangement or composition with creditors, or if you fail to comply with any of the provisions of clause 6.

4. Property

4.1 With the exception of Software which is subject to licence (where it is not intended that title should ever pass to you, but shall remain in Chillisoft as principal or as agent for the software licensor, or with the licensor as specified in the relevant licence agreement), property and ownership in Products, whether in their original form or incorporated in or attached to another product will not pass to you but will remain with us until we receive payment in full of the purchase price of the Products and all other amounts that you owe to us for any reason.

4.2 Until property passes to you, you shall hold any Products in trust as fiduciary bailee for us and/or the software licensor, and store them in a manner to enable them to be identified and cross referenced to particular invoices.

4.3 Unless otherwise notified in writing, you are authorised to sell the Products in the ordinary course of your business, but you must keep the proceeds of any Products sold in a separate account in trust for Chillisoft and/or the relevant software licensor.

4.4 Where you acquire any Products for your own use, you must tell us immediately in writing and you must not resell or part with possession of those Products, before you have paid for them in full, unless we have given you written consent.

5. Returns

5.1 You acknowledge and agree that returns shall only be accepted by us in accordance with our returns policy as notified to you from time to time, and that you may receive a credit for goods returned only if we have consented in writing.

6. Warranties

6.1 Goods are subject to the manufacturers' warranties only. We will pass on the benefit of those warranties to you, without being directly liable to you under any warranty.

7. Obligations to suppliers

7.1 We may impose certain conditions on you from time to time where our suppliers require us to do so.

8. Limitation of liability

8.1 The provisions of the Consumer Guarantees Act shall not apply to any supply of Products to you, and the conditions, warranties and guarantees set out in the Sale of Goods Act 1908 or implied by common law will not apply and are excluded from these terms of trade.

8.2 Chillisoft's maximum liability to you shall be limited to the value of any faulty Products or services supplied, and Chillisoft and its employees, contractors and agents, any manufacturers of the Products or any of their materials or components and any licensors of Software or suppliers of services, will not be liable to you for loss or damage of any kind however that loss or damage is caused or arises. This exclusion of liability includes, but is not limited to, costs (including costs of returning Products to Chillisoft or to any manufacturer or licensor), consequential loss, loss of profits and damage caused by or arising from delays in manufacturing or delivery, faulty or delayed installation, unreasonable use, negligence (including a failure to do something which should have been done or to prevent something from happening), faulty specifications and design, and faulty materials, components, manufacture, compilation, or assembly of the Products.

8.3 We will not be liable to you for any losses caused by events beyond our reasonable control. We will not be required to settle a strike or lockout or other industrial disturbance against our wishes in order to benefit from this clause.

9. Your further obligations

9.1 The Reseller acknowledges that the supply of Products under these terms and conditions is a supply for business purposes in terms of the New Zealand Consumer Guarantees Act 1993 ("Act") and accordingly, the provisions of the Act do not apply to the supply by Chillisoft to you.

10. Intellectual property and Confidentiality

10.1 All intellectual property shall remain the property of Chillisoft or any Supplier entitled to it, and neither Chillisoft nor its Suppliers transfer any right, title or interest in the intellectual property to you.

10.2 You must not use any trade marks which are the property of Chillisoft or its Suppliers, or any similar words or marks, or any combination of words which includes any of those trade marks or any similar words or marks, except to the extent authorised by Chillisoft in writing.

10.3 You agree to dispatch the Products only under the trade marks under which they are supplied by Chillisoft, and under no circumstances shall you apply any of the trade marks to any product which is not a genuine branded product supplied to you by Chillisoft.

10.4 You must not cause or permit anything which may interfere with, damage or endanger the trade marks or other

intellectual property rights of Chillisoft or its Suppliers, or assist or allow others to do so.

10.5 You must advise Chillisoft immediately when you become aware of any unauthorised use or attempted use by any person of the trade marks or other intellectual property rights of Chillisoft or its Suppliers.

10.6 You may not register a business name incorporating the words "Chillisoft".

10.7 If your account with Chillisoft is terminated, you must immediately discontinue use of any of the trade marks which are the property of Chillisoft in any sign, or advertising and thereafter you shall not use those trade marks directly or indirectly in connection with your business.

10.8 You agree to ensure that all Confidential Information given by Chillisoft to you is made available to your employees only on the basis that those employees at all times maintain strict confidentiality.

10.9 This clause 11 shall survive the termination of the Agreement.

11. General

11.1 Chillisoft reserves the right to change these terms of trade from time to time.

11.2 If Chillisoft fails to enforce any terms or to exercise its rights under these terms of trade at any time, Chillisoft has not waived those rights.

11.3 If any provision of these terms of trade is held to be invalid or unenforceable for any reason, the remaining provisions shall remain in full force and effect and the parties shall adjust their respective rights and obligations in accordance with the spirit and intent of the parties as shown by these terms of trade.

11.4 This agreement is governed by the laws of New Zealand and any dispute under it shall be subject to the exclusive jurisdiction of the Courts of New Zealand.

