

OPTIMUS SYSTEMS LIMITED TERMS AND CONDITIONS OF TRADE

EFFECTIVE FROM 1ST MAY 2023

The Terms of Trade set out below govern all of the supplies of Products and Services from Optimus Systems Limited ("Optimus Systems", "we", "us") to the customer ("you"). They will replace all earlier Optimus Systems terms of trade and any conditions contained in any document used by you and purporting to have contractual effect. Your acceptance of any Products and Services from Optimus Systems 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 Optimus Systems suppliers; "Products" means computer hardware and their components, peripherals, accessories, software and other goods or services of any kind which are supplied by Optimus Systems to you; "Website" means any internet website owned and operated by Optimus Systems

2. Price and Orders

- 2.1. Prices may be altered by Optimus Systems provided we give you no less than 60 days written notice.
- 2.2. Prices on quotes or proposals are exclusive of any taxes unless expressly specified otherwise.
- 2.3. Optimus Systems reserves the right to refuse to accept any order or any part of an order or to deliver Products 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. Risk and delivery

- 3.1. While you are in possession of the products, you are responsible for the insurance and risk in such products from the time they are received by a carrier for delivery to you or collected by you or your agent.
- 3.2. You agree to pay all delivery costs.
- 3.3. All claims for shortage or damage during delivery must be made to the carrier within 7 days of the date of delivery. Where goods appear to be damaged or missing you must contact the carrier and us immediately.
- 3.4. We will make every effort to ensure delivery of Products, or performance of services, is on time, but will not be liable to you for any loss or damage arising in any way from any delay in delivery or performance. Delay in delivery or performance does not entitle you to cancel any order.
- 3.5. Where you ask us to deliver Products directly to another person's address, any liability for the Products passes to you once the Products are left at that address. You acknowledge that you will remain directly responsible to us under these terms of trade.

4. ID Check, Credit References and Provision of Related Services

- 4.1. You authorise us to check your identity (by obtaining a Driver Check from NZTA), and your credit status with any credit reference agency as we see fit from time to time and to pass on credit information about you to any credit reference agency at any time. If you are not satisfied with the information about you which we receive from any credit reference agency, you must deal directly with the credit reference agency.
- 4.2. If you do not give us the names of any credit referees when we ask for them, or we are dissatisfied with the information regarding your credit status, we can decline your application or terminate your services with Optimus Systems Ltd effective immediately. In this case, you will be responsible for any costs we have incurred to obtain the credit check.
- 4.3. We may ask for a security deposit and/or impose other conditions upon approving your application. These may include, but are not limited to, a mandatory payment method or credit limit.
- 4.4. When you ask for any additional Services (e.g. hardware, additional subscriptions), we can ask for further credit referee(s) and/or a security deposit for that service and may also impose a credit limit.
- 4.5. We may decline your application (and/or any request for additional services or products) or provide a restricted Service at our discretion and we do not have to disclose our credit criteria or the reasons for our decision.

5. Payment

- 5.1. Unless we have agreed in writing to extend credit to you, you must pay in cash or by credit card before supply. We have sole discretion to determine the amount of credit we will extend to you at any time.
- 5.2. 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 dispatch of an invoice. Your payment is made only when funds have fully cleared through the banking system into our bank account.
- 5.3. Where accounts have not been paid in full in accordance with any credit terms we have extended to you we reserve the right to cancel any discounts, including any agreement for discounted labour rates, and to instead charge you at our normal labour rate for all past and future Products supplied to you.
- 5.4. Accounts with no transactional history after a period of 6 months will revert to our normal labour rate.
- 5.5. You agree to pay for the Products in full without deduction or set-off and to pay goods and services tax and any other government duties, levies or taxes in respect of the Products.
- 5.6. If you wish to dispute an invoice, you must notify us in writing within 14 days of the date of the invoice and provide details of the dispute. You may withhold payment of the disputed part of an invoice only and must pay that part (or any amount subsequently agreed or determined to be the correct amount owing) promptly on resolution of the dispute. The parties will use their best endeavours to resolve the dispute no later than 60 days from invoice date in accordance with this clause.
- 5.7. Between the due date and the date payment is received in full we are entitled to charge you either: interest on the unpaid overdue balance at the rate of 4% per annum above the current unapproved overdraft rate charged by ASB Bank, or a monthly \$20 administration fee, whichever is greater. Such overdue charges will compound monthly on the unpaid balance owing on the first day of each month. We may also charge you debt collection costs (including legal costs on a solicitor-client basis) and suspend delivery of further Products until all amounts owing to us are paid in full. Disputed invoices as per clause 5.6 are excluded from this clause.
- 5.8. Notwithstanding any other clauses in these terms of trade, 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, if without our consent you sell or otherwise dispose of any Products which have not been paid for, if you become insolvent, commit any act of bankruptcy, if a receiver, liquidator or statutory manager is appointed over any of your assets, if you make or attempt to make an arrangement with creditors, or if you fail to comply with any of the provisions of clause 6.

6. Customer Data

- 6.1. Subject to clause 6.2, we will access the Customer Data only in the course of providing the agreed Service to you.
- 6.2. We will only access the Customer Data and disclose the Customer Data to law enforcement or government authorities to the extent required by law. If a request for Customer Data is made by a law enforcement agency or government authority, we will redirect the request to you or if redirection is not permitted or feasible in the available time frame and unless legally prohibited from doing so, we will notify you of the request as soon as practically possible.
- 6.3. You will, as and to the extent required by law, notify individual users, that their data may be disclosed to law enforcement or other government authorities (if a request is made by law enforcement or other government authorities). It is your responsibility to obtain consent from individual users to the potential for disclosure under this clause.

7. Customer obligations

- 7.1. You will:
 - 7.1.1. make available to us in a timely manner (and in accordance with any timeframes which you have agreed to) all assistance, including personnel, information, services and equipment reasonably required by us;
 - 7.1.2. provide us with such access to its systems as reasonably required by us.

8. Property

- 8.1. With the exception of Software which is subject to licence, 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.
- 8.2. 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.

9. Security interests

- 9.1. You agree that you will on request provide us all information and do all acts necessary, including signing a general security agreement, for us to register a financing statement or purchase money security interest over the Products or their proceeds pursuant to the Personal Property Securities Act 1999, and that you will advise us immediately in writing of any changes to that information.
- 9.2. You agree that you will supply us, within 10 business days of our written request, with copies of all security interests registered over your personal property, and you authorise us as your agent to request information from any secured party relating to any security interest which is held in any personal property which is or has been in your possession

or control.

- 9.3. You agree that we may require you to pay all reasonable costs, including legal costs on a solicitor-client basis, associated with the discharge or amendment of any financing statement registered by us, whether or not the change was initiated by you.
- 9.4. If we repossess goods under this agreement, we may retain those goods or dispose of them without notice or statement of account to you or any other person, and, after deducting reasonable costs of sale, we may credit any surplus by way of set-off against any sums owing to us. We will not be obliged to re-supply any repossessed inventory.
- 9.5. You authorise third parties to provide all personal information about you or associated entities.

10. Returns

- 10.1. You acknowledge and agree that returned Products shall only be accepted by us in accordance with our returns policy as notified to you from time to time. If no returns policy has been notified to you we will only allow credits for returns at our complete discretion.

11. Warranties

- 11.1. 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.
- 11.2. Where goods are subject to a return to base warranty, you are responsible for returning them to us or the manufacturer (as provided by the warranty) and you may be responsible for additional costs including (but not limited to) freight.
- 11.3. If you require us to replace the goods under manufacturers' warranties, we will charge you at our standard service rate per hour plus relevant travel time incurred.
- 11.4. Any warranty may be voided by damage to or misuse of the system, problems caused by the use or misuse of software, negligent installation or operation, inadequate packaging, cleaning or maintenance, unauthorised repairs, modifications or the addition of incompatible hardware.

12. Obligations to suppliers

- 12.1. We may impose certain conditions on you from time to time where our suppliers require us to do so. We agree to give you 10 business days' prior written notice before such conditions are imposed.
- 12.2. You agree that any obligations to third parties we incur as part of providing Products to you will be passed on to you. You authorise us to accept terms and conditions from third parties on your behalf.

13. Limitation of liability

- 13.1. You acknowledge that because you are acquiring the Products for business purposes, the provisions of the Consumer Guarantees Act 1993 ("CGA") 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.
- 13.2. Optimus Systems maximum liability to you in any case shall be limited to the value of any faulty Products supplied.
- 13.3. Optimus Systems and its employees, contractors and agents, any manufacturers of the Products and any licensors of Software or Suppliers, 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 Optimus Systems 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.
- 13.4. 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.

14. Your further obligations

- 14.1. Where you purchase any Products from us for re-supply as, or incorporation into, goods or services ordinarily acquired for personal household or domestic use or consumption ("Consumer Products") you warrant that:
 - 14.1.1. if you supply the Consumer Products directly to an end user/consumer you will do so using terms and conditions of supply which exclude liability for any claims against us under the CGA; and
 - 14.1.2. if your customer acquires the Products for re-supply, you will ensure that your customer and each person in the distribution chain will exclude liability in its contract for supply for any claims under the CGA, but in each case only where the end user/consumer acquires the Consumer Products for business purposes, and you agree to indemnify us and our Suppliers against any failure by you, your customers or any person in the distribution chain to properly contract out of liability to business end users/consumers under the CGA.
- 14.2. You indemnify us against all costs (including legal costs on a solicitor and own client basis) expenses, losses, damages or claims arising in any way as a result of your failure to comply with any part of these terms of trade.

15. Intellectual property and Confidentiality

- 15.1. All intellectual property shall remain the property of Optimus Systems or any Supplier entitled to it, and neither Optimus Systems nor its Suppliers transfer any right, title or interest in the intellectual property to you.
- 15.2. You must not use any words or marks similar to trademarks which are the property of Optimus Systems or its Suppliers, except to the extent authorised by Optimus Systems in writing.
- 15.3. You agree to dispatch the Products only under the trade marks under which they are supplied by Optimus Systems, 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 Optimus Systems.
- 15.4. You must not cause or permit anything which may interfere with, damage or endanger the trademarks or other intellectual property rights of Optimus Systems or its Suppliers, or assist or allow others to do so.
- 15.5. You must advise Optimus Systems immediately when you become aware of any unauthorised use or attempted use by any person of the trademarks or other intellectual property rights of Optimus Systems or its Suppliers.
- 15.6. If your account with Optimus Systems is terminated, you must immediately discontinue use of any of the trademarks which are the property of Optimus Systems.
- 15.7. You agree to ensure that all Confidential Information given by Optimus Systems to you is made available to your employees only on the basis that those employees at all times maintain strict confidentiality.
- 15.8. This clause 15 shall survive the termination of the Agreement.

16. Subscription Services

- 16.1. Application of the standard terms relating to subscribed services
 - 16.1.1. A person or company that accepts an order from Optimus Systems for the provision of services ("Subscribed Services") enters into a binding legal agreement with Optimus Systems ("User Agreement") which consists of:
 - 16.1.1.1. the order;
 - 16.1.1.2. these Terms and Conditions of Trade;
 - 16.1.1.3. the Service Level Agreement which can be viewed upon request.
 - 16.1.2. By accepting the order, the Customer agrees to be bound by the User Agreement.
- 16.2. Interpretation of Subscription Services
 - 16.2.1. In the User Agreement, unless the context requires otherwise:
 - 16.2.1.1. The singular includes the plural and vice versa.
 - 16.2.1.2. A reference to any gender includes all other genders.
 - 16.2.1.3. A reference to a statute means that statute as in force from time to time, and to any statute passed in substitution for that statute.
 - 16.2.1.4. The word "includes" means "includes but is not limited to".
 - 16.2.1.5. Where one part of speech of a word is defined, other parts of speech of that word have corresponding meanings.
 - 16.2.1.6. A reference to NZ\$, NZ dollar or \$ is to New Zealand currency.
 - 16.2.1.7. If a day on or by which an obligation must be performed or an event must occur is not a business day in the place where it is to be performed, the obligation must be performed, or the event must occur by the close of the next business day.
 - 16.2.1.8. Headings are for ease of use and reference only, and do not affect interpretation.
- 16.3. Provision of Subscribed Services
 - 16.3.1. Optimus Systems Services are provided only to Customers 18 years and above.
 - 16.3.2. Optimus Systems will commence supplying Subscribed Services to the Customer within seven days of the date of first payment for Subscribed Services unless otherwise agreed with the Customer.
 - 16.3.3. Optimus Systems will continue to provide Subscribed Services unless suspended in accordance with paragraph 16.8 or until the User Agreement is terminated in accordance with paragraph 16.10.
 - 16.3.4. Optimus Systems will provide the Customer with all identification and log-in information necessary for the Customer to access and use Subscribed Services.
- 16.4. Charges
 - 16.4.1. Charges for Subscribed Services ("Subscription Charges") will be calculated according to the billing option and pricing structure for Subscribed Services selected by the Customer.
 - 16.4.2. Subscription Charges for Subscribed Services not prepaid by the Customer will be invoiced monthly.

- 16.4.3. Subscription Charges are exclusive of taxes, duties and government charges, other than income tax ("Taxes") imposed in New Zealand or overseas in relation to the supply of Subscribed Services. GST and other Taxes imposed on Optimus Systems shall be added to the Subscription Charges and shall be paid in accordance with paragraph 16.5.
- 16.4.4. The Customer is liable for all Subscription Charges for Subscribed Services accessed through the Customer's identification or log-in information whether authorised by the Customer or not, other than unauthorised access resulting from the negligence or wrongful conduct of Optimus Systems or its employees or agents.
- 16.4.5. Subscription Charges may be modified in accordance with paragraph 16.12.
- 16.5. Payment of subscribed services
- 16.5.1. Optimus Systems provides a pre-paid service. Therefore the Customer must pay any Subscription Charges by the due date specified to the Customer ("Customer Account") to receive Optimus Systems Subscribed Services.
- 16.5.2. Optimus Systems is not required to refund any prepaid Subscription Charges and will only do so at Optimus Systems discretion pursuant to paragraphs 16.8.1.4 and 16.10.
- 16.5.3. Optimus Systems may refer Customer Accounts (which it has notified to the Customer are more than 30 days in arrears) to a debt collection agency, without further notice to the Customer.
- 16.5.4. The Customer must pay Optimus Systems on demand any expenses incurred by Optimus Systems as a result of the Customer's failure to pay the Subscription Charges by the due date, including debt collection fees and Optimus Systems legal costs on an indemnity basis, regardless of whether Optimus Systems has commenced legal proceedings to recover the amount due.
- 16.5.5. If the Customer disputes the Subscription Charges payable on the Customer's Account ("Dispute"), the Customer must notify Optimus Systems in writing within 14 days of the due date of the Subscribed Charges and provide details of the dispute. The Customer may withhold payment of the disputed part of the Subscribed Charges only and must pay that part (or any amount subsequently agreed to determined to be the correct amount owing) promptly on resolution of the dispute.
- 16.5.6. The Customer must pay Optimus Systems the disputed amount of the Subscription Charges within 60 days of the due date for payment unless the Dispute has been resolved or referred by a party to a court, tribunal or other body with authority to resolve it.
- 16.6. Use of Subscribed Services
- 16.6.1. The Customer is responsible at its own expense for the provision of all equipment, including computer hardware and telecommunication connections, needed to use and access Subscribed Services.
- 16.6.2. The Customer must comply with:
- 16.6.2.1. all laws and all reasonable directions from Optimus Systems in relation to the use of Subscribed Services; and
- 16.6.2.2. any other reasonable policies Optimus Systems may notify to the Customer from time to time in connection with the provision or use of, or access to Subscribed Services.
- 16.6.3. If Subscribed Services include hosting services which incorporate material created by third parties, the Customer must obtain, at its own expense, all necessary authorisations for Optimus Systems to use or reproduce the material to the extent necessary to provide Subscribed Services.
- 16.6.4. The Customer must ensure any person who accesses Subscribed Services does not, use or attempt to use, Subscribed Services:
- 16.6.4.1. to infringe the intellectual property rights of any person, including use, sale or transmission of software or other material which infringes copyright;
- 16.6.4.2. to publish, distribute or issue any information or material which is obscene, defamatory, threatening or abusive, or which vilifies any group of persons;
- 16.6.4.3. for any purpose or activity which is illegal, or to promote any such activity;
- 16.6.4.4. to sell or offer to sell pornography or sex-related merchandise;
- 16.6.4.5. to provide links to another website which contains any content referred to in paragraph 16.6.4.2 or is used for the purposes set out in paragraphs 16.6.4.3 and 16.6.4.4;
- 16.6.4.6. to interfere with or disrupt Optimus Systems or its business, other Internet users or other service providers, or their computers, software or hardware, including by the propagation of computer worms and viruses; or
- 16.6.4.7. to access without authorisation any other computer accessible via Subscribed Services.
- 16.6.4.8. For any software that enables online anonymity, misleading IP identification, provides a hidden service or prevents Optimus Systems from complying with legal obligations.
- 16.6.5. The Customer shall take all reasonable steps to ensure that the Customer's hardware, software or network configuration (including IP addresses) are not used to cause any security breach or attack on Optimus Systems or other Customers' hardware, software or network configurations.
- 16.6.6. The Customer may use CGI-Scripts with Subscribed Services, unless Optimus Systems considers a CGI Script not provided by Optimus Systems adversely affects Optimus Systems Server performance or the integrity of the Optimus Systems computer network. The Customer may not share CGI-Scripts with domains not hosted by Optimus Systems.
- 16.6.7. The Customer must not run Background Daemons, other than on Virtual Private Server (VPS) accounts.
- 16.6.8. The Customer must use unique passwords of a least twelve characters, which include at least one of each of a number, an uppercase letter and a lowercase letter, for the purpose of Subscribed Services.
- 16.6.9. The Customer must ensure that the information it provides to Optimus Systems is complete, accurate and up to date throughout the period that Optimus Systems provides Services to the Customer.
- 16.6.10. The Customer must not run Game Servers or Game Server related applications on any Optimus Systems service.
- 16.7. Back-Ups of Subscribed Services
- 16.7.1. Optimus Systems will only perform backups of Customer Content if Subscribed Services are purchased in Optimus System Standard Hosting or Reseller Plans, or there is an agreement between Optimus Systems and the Customer in writing for Optimus Systems to perform backups of Customer Content.
- 16.7.2. If Optimus Systems is not required to perform backups of Customer content under paragraph 16.7.1, the Customer agrees to perform any backups necessary to protect the Customer from incurring financial loss as a result of data loss.
- 16.8. Suspension of subscribed services and removal of customer content
- 16.8.1. Optimus Systems may from time to time without notice to the Customer suspend Subscribed Services or disconnect or deny the Customer access to Subscribed Services if:
- 16.8.1.1. the Customer breaches the User Agreement;
- 16.8.1.2. the Customer provides Optimus Systems with false, incomplete or out of date information; or
- 16.8.1.3. the Customer's Account is more than 10 business days in arrears;
- 16.8.1.4. it is necessary to do so due to any technical failure of, or for the upgrading or preventative or remedial maintenance of Optimus Systems computer systems and software;
- 16.8.1.5. in Optimus Systems reasonable opinion, it is required by law to do so; or
- 16.8.1.6. in Optimus Systems reasonable opinion, the Customer's use of Subscribed Services adversely affects Optimus Systems Server performance or the integrity of the Optimus Systems computer network.
- 16.8.1.7. in Optimus Systems reasonable opinion, the relationship with the Customer is not economically viable provided however that Optimus Systems has provided the Customer with no less than 90 days written notice of the intention to suspend the Subscribed Services or disconnect or deny the Customer access to Subscribed Services.
- 16.8.2. Subscribed Services suspended under paragraph 16.8.1.1 will not be reinstated until the breach is remedied if capable of being remedied, or the account and interest is paid in full, and a fee of \$75 for the administrative costs of reinstatement is paid.
- 16.8.3. The 14 day grace period outlined in 16.8.1.3, is a privilege provided to our customers. This cannot and will not be extended under any circumstances. Optimus Systems reserves the right to increase the reinstatement fee in the event that there are multiple instances of non-payment by the same Customer.
- 16.8.4. Optimus Systems shall compensate the Customer for suspension of Subscribed Services pursuant to paragraph 16.8.1.4 only, in accordance with the Service Level Agreement.
- 16.8.5. Optimus Systems may remove Customer Content in accordance with its Removal of Customer Content Policy available upon request.
- 16.9. Warranties and Limitation of liability relating to subscribed services
- 16.9.1. Optimus Systems does not give any express warranties in relation to Subscribed Services, including warranties that:
- 16.9.1.1. Customers will have continuous access to, or usage of Subscribed Services; or
- 16.9.1.2. data stored on Optimus Systems Servers will not be lost or corrupted;
- 16.9.1.3. it will be possible to restore Customer Content from Optimus Systems back up media; or
- 16.9.1.4. it will be able to prevent unauthorised persons obtaining access to Customer Content
- 16.9.2. Any condition or warranty which would otherwise be implied into this User Agreement is excluded, unless it would be unlawful to do so.
- 16.9.3. Optimus Systems liability to the Customer in relation to Subscribed Services on any legal basis is limited, to the extent it is lawful to do so, to one or more of the following:
- 16.9.3.1. the supplying of Subscribed Services again; or
- 16.9.3.2. the payment of the reasonable costs of having Subscribed Services supplied again.
- 16.9.4. The Customer acknowledges that Optimus Systems does not and cannot control, supervise or edit any information or material accessed through Subscribed Services and that Optimus Systems is not responsible for any content or information accessed via Subscribed Services.
- 16.10. Termination of Subscribed Services
- 16.10.1. Either party may terminate the User Agreement by giving notice to the other if the other commits a material breach of any provision of the User Agreement which:
- 16.10.1.1. can be rectified, and fails to rectify the breach within 30 days of notice being given by the party alleging the breach, describing the breach and the action which must be taken to rectify it; or
- 16.10.1.2. cannot be rectified.
- 16.10.2. Optimus Systems may terminate a User Agreement by giving notice to the Customer if the Customer knowingly provides false or misleading information to Optimus Systems, abuses or threatens staff or the relationship is not economically viable.
- 16.10.3. Optimus Systems at its own discretion may choose not to renew a customer's subscription. In such instances, 90 days' notice will be given.
- 16.10.4. The Customer may terminate a User Agreement by giving Optimus Systems notice at least 2 business days before the end of any period for which the Customer has paid for provision of Subscribed Services ("Paid-up Period") with effect from the end of that Paid-up Period.
- 16.10.5. If the User Agreement is terminated by Optimus Systems under paragraph 16.10.1 or 16.10.2, all outstanding Subscription Charges will become payable upon the giving of notice of termination.
- 16.10.6. Optimus Systems is not required to refund any prepaid Subscription Charges, unless the User Agreement is terminated by the Customer under paragraph 16.10.1.
- 16.11. Sub-Contracts of Subscribed Services
- 16.11.1. Optimus Systems may sub-contract the performance of its obligations under the User Agreement without obtaining the Customer's consent.
- 16.12. Variation of the user agreement relating to Subscribed Services
- 16.12.1. Optimus Systems may modify the User Agreement (including by varying Subscribed Services or the Prices) by email sent to the last email address provided to Optimus Systems by the Customer, or by changing a renewal order. Modifications shall not take effect until the later of the day following the last day of the Customer's current Pre-paid Period, or 30 days after the Notice of Modification is given. Any use of Subscribed Services after the date on which modification takes effect will constitute acceptance of the modification.
- 16.12.2. If the User Agreement may also be modified by a written agreement between Optimus Systems and the Customer, or in accordance with paragraph 16.12.1. The User Agreement and any such written agreement constitute the entire agreement between Optimus Systems and the Customer.
- 16.13. Notice
- 16.13.1. Any notice issued by Optimus Systems or the Customer pursuant to the User Agreement shall be in writing. Notices may be delivered by hand, by receipted mail, or by email to the last email address provided to Optimus Systems by the Customer, or Optimus Systems address as identified on the www.optimus.co.nz website.
- 16.13.2. Notice will be treated as given:
- 16.13.2.1. in the case of hand delivery, on the date of delivery;
- 16.13.2.2. in the case of postal delivery, on the date of delivery recorded by the postal authority;
- 16.13.2.3. in the case of email, on receipt by the sender of notification that the email has been received by the recipient's email server, but if the delivery or receipt is not on a business day or is after 5.00pm on a business day in the place where it is received, the notice is taken to be received at 9.00am on the next business day.
- 16.13.3. It is the Customer's responsibility to notify Optimus Systems of any changes to its contact details.
17. Privacy
- 17.1. We collect, use and disclose Personal Information about your Users and other representatives in accordance with:
- 17.1.1. the Privacy Act 1993;
- 17.1.2. our Privacy Policy available at www.optimus.co.nz/privacy; and
- 17.1.3. this Agreement.
- 17.2. For the purposes of this Agreement, references to 'you' (or similar words) in our Privacy Policy will be construed as references to your Users and other representatives
- 17.3. You confirm that your Users and other representatives consent to and authorise our collection and use of their Personal Information in accordance with clause 17.1 and that you have advised such persons of their rights to access and request correction of their Personal Information in accordance with our Privacy Policy.
18. General
- 18.1. Optimus Systems reserves the right to change these terms of trade from time to time by providing you with not less than 30 days prior written notice.
- 18.2. If Optimus Systems fails to enforce any terms or to exercise its rights under these terms of trade at any time, Optimus Systems has not waived those rights.
- 18.3. No variation or representation outside of these terms of trade is valid or binding unless agreed to in writing.
- 18.4. 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.
- 18.5. 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.
- 18.6. For the avoidance of doubt, if there is any contradiction between the Terms of Trade and the Managed Services Agreement (or equivalent) for you then the provisions of the Managed Services Agreement shall take precedence.
19. Dispute Process
- 19.1. Except for clause 5.6 and 16.5.5 which outlines the dispute process, the parties agree that this clause 19 applies to any dispute between the parties in connection with the Products and Services provided by Optimus Systems.
- 19.2. The parties shall first endeavour to resolve any dispute or difference by agreement and (if they agree) by mediation.
- 19.3. Unless any dispute or difference is resolved by mediation or other agreement within 30 days of the dispute or difference arising, the same shall be submitted to the arbitration of one arbitrator who shall conduct the arbitral proceedings in accordance with the Arbitration Act 1996 and any amendment of it or any other statutory provision then relating to arbitration.
- 19.4. If the parties are unable to agree on the arbitrator, an arbitrator shall be appointed, upon request by any party, by the President or a Vice President for the time being of the New Zealand Law Society. That appointment shall be binding on all parties to the arbitration and shall not be subject to appeal. The provisions of Article 11 of the First Schedule of the Arbitration Act 1996 are to be read subject to this and varied accordingly.
- 19.5. If a dispute arises between the parties, no party may start proceedings relating to the dispute (unless that party seeks urgent interlocutory relief) without first comply with this clause 19.

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