

pcMedia, 82 Seymour Street, PO BOX 82, Blenheim **And** 281 Queen Street, Richmond

t: 03 5781100 or 0800 5781100 w: www.pcmmedia.co.nz e: accounts@pcmmedia.co.nz

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Terms of trade

Definitions

In these conditions unless the context otherwise requires:

Account Status of Buyer means Gold Status, Silver Status, or Standard Status as decided by the Company at its sole discretion.

Buyer means the person, or company buying the products and/or services from the Company.

Company means the companies trading as pcMedia

Contract means the contract between the Company and the Buyer for the purchase of the goods.

Contract price means the price of goods as agreed between the Buyer and the Company

Date of the contract means where the contract arises from a quotation given by the Company; i) the date of acceptance of the order by the Company; or ii) Where the contract arises from a quotation given by the Company, the date upon written notification of acceptance of the quotation is received by the Company.

Environment means a combination of information technology, software, hardware, equipment, configuration, system design, and knowhow at any location.

Gold Status means the Buyer will be charged an hourly rate lower than the Company's standard hourly rate, the Payment Date for all invoices shall be the 20th day of month following the date of the Company's invoice to the Buyer, the Buyer has accepted the Company's Terms of Trade, the Buyer is entitled to a discount if an invoice is paid in full within 3 days of the invoice date, and invoices are emailed rather than mailed.

Manager is the companies appointed decision maker.

Person includes a corporation, association, firm, company, partnership or individual.

PPSA means the Personal Property Securities Act 1999.

Products and/or Services mean any media, printed materials, software, hardware, equipment, design, knowhow, training, management, monitoring, online or electronic documentation, being:

purchased by the Buyer from the Company,

on-sold to the Buyer by the Company as a reseller or distributor for a third party,

rented or leased or otherwise made available or provided to the Buyer by the Company as a reseller or distributor for a third party.

Quotation shall mean price on offer for a fixed term.

Silver Status means the Buyer will be charged an hourly rate lower than the Company's standard hourly rate, the Payment Date for all invoices shall be invoice date of the Company's invoice to the Buyer, and the Buyer has accepted the Company's Terms of Trade.

Standard Status means the Buyer will be charged the Company's standard hourly rate for all services, the Payment Date for all invoices shall be invoice date of the Company's invoice to the Buyer, and the Buyer has accepted the Company's Terms of Trade.

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Quotation or Proposal

The Buyer or potential Buyer may request a Quotation or Proposal from the Company setting out the price and quantity of the Products and/or Services to be supplied. If the Quotation or Proposal is acceptable to the Buyer, the Buyer may place an order within an acceptable timeframe. The information contained within Quotation or Proposal always remains the property of the Company. No person, company, or entity is permitted to copy or use the information contained within the Quotation or Proposal without the expressed written permission of the Company. If requested by the Company the Quotation or Proposal must be returned to the Company.

Site Audit

The Company will provide a Quotation or Proposal free of charge. If the Company believes the scale and/or complexity of a Buyer's site is such that it would be prudent to undertake a Site Audit then the Company reserves the right to charge 50% of the Site Audit on a time engaged basis at the Company's standard hourly rate.

Acceptance

If any instruction is received by the Company from the Buyer for the supply of products and/or services, it shall constitute acceptance of the terms and conditions contained herein. Upon acceptance of these terms and conditions by the Buyer, the terms and conditions are definitive and binding. These terms and conditions and any subsequent terms and conditions issued by the Company shall apply to all orders for the goods and the services made by the Buyer. It shall be the Buyer's responsibility to ensure that these conditions are promptly brought to the attention of the appropriate staff of the Buyer.

Price

- The Price shall be as indicated on invoices provided by the Company to the Buyer in respect of products and/or services supplied; or
- The Price shall be the Price of the Company's current Price at the date of delivery of any goods.
- Time for payment for the products and/or services shall be of the essence and will be stated on the invoice, quotation, tender documents, work authorisation form or any other work commencement forms. If no time is stated then payment shall be due on delivery of any goods.
- The Buyer agrees that the cost Price shall be determined by the Company, and shall take into consideration "one-off" costs such as design and production.
- The Company reserves the right to implement a surcharge for alterations to specifications of products after the order has been placed.

Payment

- The method of payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Buyer and the Company.
- Subject to any provision to the contrary in the Contract, payment (being cash unless otherwise arranged in advance and confirmed in writing by a director of the Company or his appointee) shall be received on or before the Payment Date associated with the Account Status of the Buyer.

- Late payment shall incur interest at the rate of 1.5% per month. This shall be payable on any monies outstanding under the Contract from the date payment was due until the date payment is received by the Company, but without prejudice to the Company's other rights or remedies in respect of the Buyer's default in failing to make payment on the due date.
- Late payment shall incur debt collection costs (if any) on a cost incurred basis. These shall be added to any monies outstanding under the Contract until the date payment is received by the Company, but without prejudice to the Company's other rights or remedies in respect of the Buyer's default in failing to make payment on the due date.
- Without prejudice to any other remedies the Company may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Company may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under the terms and conditions. The Company will not be liable to the Buyer for any loss or damage the Buyer suffers because the Company exercised its rights under this clause.
- In the event that:
 - a. any money payable to the Company becomes overdue, or in the Company's opinion the Buyer will be unable to meet its payments as they fall due; or
 - b. the Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - c. a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer; then without prejudice to the Company's other remedies at law
 - d. the Company shall be entitled to cancel all or any part of any order of the Buyer that remains unperformed in addition to, and without prejudice to any other remedies; and all amounts owing to the Company shall, whether or not due for payment, immediately become payable.

PPSA

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- The Contract constitutes a security interest in the goods supplied by the Company to the Buyer for the purposes of the PPSA as security for payment by the Buyer of all amounts due under the Contract, including any future amounts.
 - The Buyer agrees to promptly execute and deliver to the Company all assignments, transfers and other agreements and documents and do anything else which the Company may deem appropriate to perfect the Company's security interest over the Buyer, or obtain the priority required by the Company or register (and renew registration) a financing statement for a security interest in favour of the Company.
 - To the extent that Part 9 of the PPSA applies, the Buyer agrees that the provisions of sections 114(1) (a), 120, 122, 133 and 134 of the PPSA which are for the Buyer's benefit, or place any obligations on the Company in the Buyer's favour, will not apply; and where the Company has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.
 - To the extent that Part 9 of the PPSA applies, without limiting anything in the previous paragraph, the Buyer hereby waives its rights under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA, and its rights to receive a copy of a verification statement under section 148 of the PPSA in respect of any financing statement or financing change statement registered by the Company.
 - The Buyer agrees to treat the security interest in the goods as a continuing and subsisting security with priority over a registered general security interest and any unsecured creditors, regardless of whether the goods have become fixtures at any time before payment has been made for them.

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Governing laws

These Terms of Trade will be interpreted in accordance with applicable government legislation, which will have exclusive legal jurisdiction over any dispute in relation to the products and/or services or these Terms of Trade.

Exclusivity

No person shall be permitted to perform work on the Buyer's environment without the prior approval of the Company. The Buyer cannot assign its rights under this Contract without the prior written approval of the Company.

Dispute resolution

Where any dispute arises the Company will endeavour to resolve any dispute between the Buyer and itself without the need for Court proceedings. Any such attempt is without legal prejudice. No party may commence any court or arbitration proceedings relating to any dispute without first complying with this clause.

Written notice of the dispute (the notice) must be provided to the other party. Within 7 days of the notice each party must nominate, in writing and advise the other party, a Person to represent them for the negotiations. The nominated Person shall have the authority to settle or resolve the dispute. If the parties are unable to resolve the dispute by negotiation after 14 days from the date of the notice then the parties must immediately refer the dispute to arbitration in terms of the Arbitration Act.

Reservation of title

Ownership and title of the goods remains with The Company until the purchased price and all other monies owing by the Buyer, under the contract or any other contract to The Company, have been paid in full.

Warranty

The Company warrants that it will repair or make good any defects in the goods, if written notice of the claim is received by the Company within seven (7) days from the date the goods were delivered. No claim shall be accepted under such warranty if any attempt to repair the defective goods is made by any person not authorised by the Company, or if the defective goods have been modified or incorrectly stored, maintained or used. If the Company elects to repair or replace any defective goods, such work shall be undertaken at such place as the Company may reasonably specify and the Buyer shall be responsible at its cost and risk for shipment of the defective goods to the place specified.

Limitation of Liability

The Company shall not be liable or held liable for any indirect or consequential loss or damage arising out of the performance of any work or duties, including data loss or business disruption. Following **seven (7) days from delivery of any product or service, the full and complete liability for ongoing use of any product or service shall belong to the Buyer**. If any parts of this Limitations of Liability are held by a Court of competent jurisdiction to be invalid, then it is understood that the total liability of the Company shall not exceed the value of any individual disputed product or service on an explicit invoice.

GoBackUP and TheBackUP service

- The GoBackUP and TheBackUP services are provided by the Company in conjunction with a third party Data Centre. The Company will confirm in which Data Centre the off-site back-up is stored. The Company agrees not to change the Data Centre without first consulting with the Buyer including giving written notice.
- The Company provides software and hardware to operate with this service. This software and hardware is the property of the Company despite in some cases the software being registered by the Company to the Buyer.
- At the end of the contract or if the contract is terminated by either party, the software and hardware must be returned to the Company. If requested by the Company the Buyer must give the Company on-site access and assist the Company to uninstall the software.
- The contract term runs for a minimum of twelve months
- Either party may terminate this service within twelve months by giving 90 days' notice in writing however the Company reserves the right to charge an early termination fee equal to the remaining monthly charges.

Privacy

The Company shall comply with the obligations set out in the Privacy Act 1993. The Company will not breach the privacy of any customer or client.

Workshop Services

Workshop services include, but not limited to, fault assessment, diagnostic testing, repair, replacement, insurance report, and data transfer:

- We have a minimum fee of \$75 for any service
- Where possible we will provide you with an estimate of the fee to undertake the work requested.
- Payment is required in full by cash or EFTPOS or credit card at the time of pick-up.
- A standard repair takes 5 - 10 working days. We will endeavour to provide services for your hardware components within 5 business days of any supplied parts. Often suppliers require 3 - 4 business days to supply any parts necessary.
- It is vital that you understand that hard disk drives, fans, and other components may fail during diagnostic or repair testing. This may be due to their condition or age such as the hard disk MTBF (Mean Time Before Failure). We will attempt to return your computer in good working order, however it is important you understand testing may place burden on the components and these may also need to be replaced or repaired for an additional fee.
- If you supplied us with a computer that is failing we reserve the right to charge the minimum fee, for diagnostic workshop time prior to providing a summary of issues and repair estimates. We do not supply free quotations on work that requires diagnostics.
- Please endeavour to pick-up your item following our telephone call/email within 10 working days. Items remaining in our workshop in excess of 90 days become the property of pcMedia.
- You must ensure all data on the device has been successfully backed up by you to an independent device. If you cannot confirm the data has been successfully backed up, you nevertheless agree to pcMedia undertaking the work request, knowing as a result the data on the device could be lost, become unreadable, or unusable.

- If you believe the device repair should be covered by a Warranty then you must provide a copy of that Warranty to us before we undertake any work. While a warranty should cover the cost of replacing parts it will NOT cover the labour cost to reinstate data or reinstalling programs other than the operating system. Where possible we will provide you with an estimate of the fee to undertake the work not covered by the warranty.

Cloud Services

Cloud services include, but not limited to, private and public cloud services provided by a third party Data Centre to the Buyer. For example Microsoft Azure and Microsoft Office365:

- At any time the Buyer can request a copy of the Data Centre Terms and Conditions.
- The Company and Buyer must conform to the Terms and Conditions of the Data Centre.
- Cloud services are provided by the Company in conjunction with a third party Data Centre. The Company will confirm in which Data Centre the Buyer's data is stored. The Company agrees not to change the Data Centre without first consulting with the Buyer including giving written notice.
- The Company provides Intellectual Property (IP) to build, implement, and develop an Environment at the Data Centre to operate cloud services for the Buyer.
- The Buyer owns the data.
- The Company owns the IP and Environment.
- At the end of the contract or if the contract is terminated by either party, the Buyer's data is returned to the Buyer. The IP and Environment remains with Company and is not transferred to the Buyer.
- The IP and Environment remains the sole property of the Company and cannot be used or copied in any manner by anyone without the expressed written permission of the Company.
- Subject to the Data Centre Terms and Conditions either party may terminate cloud service by giving 90 days' notice in writing of the termination date. Unless otherwise agreed by the Company the monthly Cloud Service fees will continue to apply until termination date.
- The Company will charge a fee based on time engaged at our standard hourly rate to return the data to the Buyer and closedown the Environment with the Data Centre.

End User Agreements

The Company does not own all Products and/or Services and the use thereof is subject to certain rights and limitations of which the Company and Buyer must conform including:

- The Buyer is prohibited from removing, modifying or obscuring any copyright, trademark or other proprietary rights notices that are contained in or on any Products and/or Services;
- The Buyer is prohibit from reverse engineering, decompiling, or disassembling the Products and/or Services, except to the extent that such activity is expressly permitted by applicable law;
- The Company or a third party on Company's behalf will provide technical support for the Products and/or Services;
- The Products and/or Services are not fault-tolerant and are not guaranteed to be error free or to operate uninterrupted. The Buyer must not use the Products and/or Services in any application or situation where the Products and/or Services failure could lead to death or serious bodily injury of any person, or to severe physical or environmental damage ("High Risk Use"). High Risk Use does not include utilization of Products for

administrative purposes, to store configuration data, engineering and/or configuration tools, or other non-control applications, the failure of which would not result in death, personal injury, or severe physical or environmental damage. These non-controlling applications may communicate with the applications that perform the control, but must not be directly or indirectly responsible for the control function

- The Company can grant a third party supplier of Products and/or Services the right to be a beneficiary of this **End User Agreement**, with the right to enforce provisions of the **End User Agreement** and to verify the compliance of the Buyer. If the Company believes in good faith that any Buyer is not complying with a third party license terms, the Buyer must cooperate in good faith with the Company to investigate and remedy the non-compliance.
- Within seven (7) days of the termination of an **End User Agreement**, the Company shall: remove all copies of Products and/or Services from the Buyer's devices or otherwise render the Products permanently unusable; and require that the Buyer returns or destroys all copies of Products and/or Services that it received.

EFTPOS Terminal Lease

- **Standard maintained lease.** The monthly lease charge covers the installation, servicing, repair, and software upgrades of the EFTPOS Terminal only. In the event of failure of the EFTPOS Terminal the Company will replace the unit on the following business day. The monthly lease charge does not cover the cost of installation, servicing, repair, and software upgrades of any hardware or service the EFTPOS Terminal relies on to function including but not limited to power supply, internet or phone access, third party service, or training.
- **Gold maintained lease.** The monthly lease charge covers the installation, servicing, repair, and software upgrades of the EFTPOS Terminal only. In the event of failure of the EFTPOS Terminal the Company will replace the unit within two hours of failure. The monthly lease charge does not cover the cost of installation, servicing, repair, and software upgrades of any hardware or service the EFTPOS Terminal relies on to function including but not limited to power supply, internet or phone access, third party service, or training.
- EFTPOS leases run for **36** months unless stated otherwise. **After** 36 months this will revert to a **casual** contract (being 60 days notice).

Customer Service Request

Support coverage

Normal hours	After hours	Outside hours	Public Holiday
Mon-Fri 8:30am-5:00pm	Mon-Fri 7:30am-8.30am 5:00pm-9.00pm Sat-Sun 8:30am-9:00pm	Mon-Fri 9:00pm-7:30am Sat-Sun 9:00pm-8:30am	8:30am-9:00pm
Covered	Covered	Not covered	Covered

Customer Service request types

Type	Nature
Standard	Customer is inconvenienced by an issue but <u>can</u> work around it until resolved.
Urgent	Business wide the customer is inconvenienced by an issue but <u>cannot</u> work around it until resolved. or Problem or outage affecting critical functions or essential services for single users.
Critical	Problem or outage affecting critical functions or essential services for the entire business.

Response time & fee

Type	Time	Fee
Standard	Next business day	Standard hour rate
Urgent	6 business hours	Standard hour rate, minimum charge of two hours
Critical	4 business hours	Standard hour rate, minimum charge of two hours

Response Time

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Response Time is the moment a system engineer or desktop technician has; triggered remote support software, left to travel to a customer site, phoned to provide telephone support, triggered a support request to a third party provider, or requested from the customer more information about the service request.

Fee add-on for other than normal hours

Description	Rate	
Travel for any service	\$1	per km
After hour any service	\$100	per call out
Public holiday any service	\$350	per call out

Logging any service request

Your service request must state whether you believe the matter is urgent or critical.

Use email address Kiri@pcmmedia.co.nz

Telephone 03 578 1100

Service	Normal hours	After hours	Outside hours	Public Holiday
Standard	Email	Call after hours service (CallCare)	Not applicable	Call after hours service (CallCare)
Urgent and critical	Email and call	Call after hours service (CallCare)	Not applicable	Call after hours service (CallCare)