

# **SOTECH MARKETING LIMITED**

## **TERMS OF TRADE**

The terms of trade set out below govern all of the supplies of goods and services from Sotech Marketing Limited (“Sotech”, “we”, “us”) to the Customer (“you”). They will replace any terms and conditions contained in any document used by you and purporting to have contractual effect, and your acceptance of any goods or services from Sotech indicates your acceptance of these terms of trade. These terms of trade are effective from 24 June 2002 and replace all earlier terms of trade between you and Sotech.

### **1. Quotations and prices**

- 1.1 Each quotation is open for the period stated on the quotation. However, any quotation may be withdrawn at any time before acceptance. Acceptance of a quotation constitutes an offer by you to Sotech.
- 1.2 Quotations are made on the basis that all work will be performed during Sotech’s usual forty hour working week Monday to Friday. The cost of any work requested to be completed outside these times will be payable by you at the appropriate penal rate over and above the quotation price.
- 1.3 All quotations are based upon the rates and costs of materials, transport, labour, customs duty, insurance, taxes and other items including the exchange rate, which are current at the date of the quotation. Where, at any time before delivery or performance of work in respect of the goods (whether before or after acceptance of any quotation) any increase occurs in any rate or cost of any item (including any change in exchange rates) relevant to or affecting the cost to Sotech of performance of the contract, that increase may be added to the quotation as Sotech from time to time deems appropriate.
- 1.4 All prices not subject to quotation are subject to alteration without notice.
- 1.5 You agree to pay goods and services tax and any other government duties, levies or taxes in respect of the goods or services.
- 1.6 All installation and service work is charged out at Sotech’s rates ruling at the date the service is supplied.
- 1.7 Orders may be cancelled only if Sotech agrees in writing to the cancellation and the order has not been processed.

### **2. Delivery and risk**

- 2.1 You are responsible for risk in the goods from the earlier of the time they are received by a carrier for delivery to you, or the time they are received by you or your agent.
- 2.2 You agree to pay all delivery costs. If we deliver any order in parts, then each delivery is a separate contract.
- 2.3 You do not have the right to possess goods until they are delivered to you or collected by you. Where you ask us to deliver goods or software directly to another person, that person takes possession of the goods for you as your agent.
- 2.4 All claims for shortage or delivery damage must be made to the carrier and to Sotech within 3 business days of the date of delivery.
- 2.5 We will make every effort to ensure delivery of goods, 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.

### **3. Payments and property**

- 3.1 Unless we have agreed in writing to extend credit to you in another manner, you must pay for all goods in full before delivery or collection.
- 3.2 Where we have agreed to extend credit to you, you must pay in full, without deduction or setoff, by the 20<sup>th</sup> day of the month following the date of invoice. Your payment is made only when funds have fully cleared through the banking system into our bank account.
- 3.3 If you have not paid in full by the due date, we may charge you interest compounding monthly on the unpaid overdue balance at the rate of 5% per annum above the current overdraft rate charged by our

bankers, and we may charge costs (including collection costs and legal costs on a solicitor-client basis) and suspend delivery of further goods or performance of further services until the account is paid.

- 3.4 Payments which you make to us will be applied first to any sum of money which is owed in respect of service work, then to payment for any goods which have been purchased as inventory and which have been sold by you, then to payment for goods supplied by us which have not been sold by you.
- 3.5 Property and ownership in goods or software licences, whether in their original form or incorporated in or attached to another product, will not pass to you but will remain with Sotech until Sotech receives payment in full of the purchase price of the goods or software licences and all other amounts that you owe to Sotech for any reason.
- 3.6 Until property passes to you, you shall hold any goods or software in trust for Sotech and/or any software licensor, and store and sell them in a manner to enable them to be identified and cross referenced to particular invoices.
- 3.7 Unless otherwise notified in writing, where goods are sold to you as inventory for resupply, you are authorised to sell the goods in the ordinary course of your business, but you must keep the proceeds of any goods sold in a separate account in trust for Sotech.
- 3.8 You must not resell or part with possession of any machinery, equipment or software that we supply for your use before you have paid for it in full, unless we have given you written consent.
- 3.9 Notwithstanding clauses 3.1 and 3.2 above, all payments shall immediately become due to Sotech if we reasonably believe that the information which you have given us in your application for credit is not correct or no longer correct, and you have failed to give us correct information within 5 days of our request, if, without our consent you sell or otherwise dispose of any equipment, machinery or software which have not been paid for, if you become insolvent, commit any act of bankruptcy, or if a receiver, liquidator or statutory manager is appointed over any of your assets or undertaking, if you fail to comply with any of the provisions of clause 5, or if you make or attempt to make an arrangement or composition with creditors.
- 3.10 Where Sotech reasonably believes you are or will be in breach of any part of clauses 4 or 5 of this agreement, Sotech or its agent may enter your premises without further notice to remove any goods which are the property of Sotech, including goods or software which are installed in or affixed to other goods, and you indemnify Sotech against all costs and claims in respect of its exercise of rights under this clause 4.

#### 4. **Security interests**

- 4.1 If we extend credit to you or if you owe us money for any reason, you agree to grant us a security interest in the property that we have supplied to you. You agree that you will do all acts necessary and provide us on request all information we require to register a financing statement over the goods and their proceeds, and that you will advise us immediately in writing of any changes to that information. You waive all rights to receive a copy of any verification statement of a financing statement. The goods and services subject to the security interest will be described on our invoices.
- 4.2 You agree that you will supply Sotech, within 2 business days of its written request, with copies of all security interests registered over your personal property, and you authorise Sotech 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.
- 4.3 You agree that Sotech, at its option 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 Sotech, whether or not the change was initiated by you.
- 4.4 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 setoff against any sums owing to us. We will not be obliged to resupply any repossessed inventory.
- 4.5 You authorise us to search the Personal Property Securities Register at any time for any information about you or (if you are a company) your parent or associated companies.

## 5. **Sotech Warranties**

- 5.1 Where the Consumer Guarantees Act applies to the supply of goods or services under these terms of trade, you may have additional rights under that Act.
- 5.2 Sotech warrants that it will replace, or at its option repair, goods supplied under this agreement which are accepted as defective, provided that you notify Sotech in writing of any defect within 14 days of delivery.
- 5.3 Where goods and software are subject to a manufacturer's guarantee, Sotech will pass on the benefit of that guarantee to you, without itself being directly liable to you, except where otherwise notified to you in writing.
- 5.4 Where goods are subject to a return to base warranty, you are responsible for returning them to the manufacturer or to Sotech, and you may be responsible for additional costs including (but not limited to) freight. Where you require Sotech to carry out the warranty service on site, you agree to pay Sotech's service and call-out charges.
- 5.5 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, installation in corrosive or damp atmospheres, the application of solvents, incorrect lubricants or corrosive material to the goods, incorrect cleaning or maintenance, unauthorised repairs, modifications or the addition of hardware, software or consumables not supplied by Sotech.
- 5.6 Where the goods or services that you acquire from Sotech are not of a kind ordinarily acquired for personal household or domestic use or consumption, or where you acquire, or hold yourself out as acquiring, the goods or services for the purposes of a business, the provisions of the Consumer Guarantees Act 1993 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.

## 6. **Customer Warranties**

- 6.1 If you acquire any goods or services from Sotech for re-supply as, or incorporate or attach any goods or services acquired from Sotech into, goods or services ordinarily acquired for personal household or domestic use or consumption ("Consumer Products") you warrant that:
- (a) 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 under the Consumer Guarantees Act 1993; and
  - (b) if your customer acquires the goods for re-supply, your customer and each person in the distribution chain will exclude liability in its contract for supply for any claims under the Consumer Guarantees Act 1993,
- but in each case only where the end user/consumer acquires the Consumer Products for business purposes.
- 6.2 You agree to indemnify Sotech against any failure by you, your customers or any person in your distribution chain to properly contract out of liability to business end users/consumers under the Consumer Guarantees Act 1993.

## 7. **Limitation of liability**

- 7.1 Sotech will not be responsible for any loss or costs incurred through your failure to back up data.
- 7.2 Sotech will not be liable for any losses of any kind or any delay in supplying goods or services which are caused in whole or in part by force majeure including (but not limited to) any act of God, natural disaster, flood or earthquake, strike, lockout, fire, war, civil commotion, network service failure, inability to obtain products or supplies including the imposition of any export or import bans, or any other cause beyond its reasonable control.
- 7.3 Subject to clause 5.1, Sotech's liability shall be limited to the value of any goods or services supplied, and Sotech, and its employees, contractors and agents, any manufacturer(s) or developer of the goods or any of their materials or components and any 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 limitation of liability includes, but is

not limited to, costs (including costs of returning goods to Sotech or to any manufacturer), loss of data, consequential loss, loss of contracts, 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), failures after 31 December 1999 of goods or software to function or to recognise dates, faulty specifications and design, and faulty materials or components of the goods.

7.4 Subject to clause 5.1, any goods delivered by you to Sotech for service or other reasons are held at your own risk while in our care, and we accept no liability for their loss or damage.

#### 8. **Software intellectual property rights**

8.1 Neither Sotech nor its suppliers transfers any right, title or interest in any copyright, trade marks, or other intellectual property rights relating to any of the goods or software to you.

8.2 Where Sotech produces or adapts software for you or designs equipment for you, you agree that Sotech will have copyright in that new software or adaptation.

8.3 Where you require Sotech to modify or adapt software, you warrant that Sotech has the right to make that modification or adaptation, and you indemnify Sotech against all costs and losses whatsoever, including claims from third parties, which arise as a result of Sotech carrying out your requests.

#### 9. **Personal Information**

9.1 Sotech will use any personal information that you supply for credit, administration, service and marketing purposes. You have the right of access to, and to ask for correction of, your personal information.

9.2 You authorise any person or company to provide Sotech with any information it may require in response to your application for credit and/or other enquiries.

#### 10. **General Conditions**

10.1 Sotech reserves the right to change these terms of trade from time to time by notice to you in writing.

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

10.3 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.

10.4 Any agreement between you and Sotech is governed by the laws of New Zealand. You agree that any dispute is subject to the exclusive jurisdiction of the New Zealand courts although Sotech reserves the right to commence any proceedings against you in any other court.

Signed for Customer

\_\_\_\_\_  
Signature

Date: \_\_\_\_ / \_\_\_\_ / 200\_\_

\_\_\_\_\_  
Position

\_\_\_\_\_  
Customer name