

Amtrax Limited – Terms & Conditions of Trade

- 1. Definitions**
- 1.1 "Amtrax" shall mean Amtrax Limited its successors and assigns or any person acting on behalf of and with the authority of Amtrax Limited.
- 1.2 "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by Amtrax to the Client.
- 1.3 "Goods/Services" shall mean all Goods and/or any Services supplied by Amtrax to the Client and includes all Goods and/or any Services described on any invoices, quotation, work authorisation or any other forms and any advice or recommendations as provided by Amtrax to the Client.
- 1.4 "Price" shall mean the price payable for the Goods as agreed between Amtrax and the Client in accordance with clause 3 of this contract.
- 2. Acceptance**
- 2.1 Any instructions received by Amtrax from the Client for the supply of Goods/Services and/or the Client's acceptance of Goods/Services supplied by Amtrax shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of Amtrax.
- 2.3 The Client shall give Amtrax not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's contact details. The Client shall be liable for any loss incurred by Amtrax as a result of the Client's failure to comply with this clause.
- 3. Price And Payment**
- 3.1 At Amtrax's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by Amtrax to the Client in respect of Goods/Services supplied; or
- (b) Amtrax's quoted Price (subject to clause 3.2) which shall be binding upon Amtrax provided that the Client shall accept Amtrax's quotation in writing within the time period stated on the quotation.
- 3.2 Amtrax reserves the right to change the Price in the event of a variation to Amtrax's quotation.
- 3.3 At Amtrax's sole discretion a deposit may be required.
- 3.4 Time for payment for the Goods/Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 3.5 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 4. Delivery Of Goods**
- 4.1 Delivery of the Goods/Services to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 4.2 Amtrax may deliver the Goods/Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 4.3 The failure of Amtrax to deliver shall not entitle either party to treat this contract as repudiated.
- 4.4 Amtrax shall not be liable for any loss or damage whatever due to failure by Amtrax to deliver the Goods/Services (or any of them) promptly or at all, where due to circumstances beyond the control of Amtrax.
- 5. Risk**
- 5.1 If Amtrax retains ownership of the Goods/Services nonetheless, all risk for the Goods/Services passes to the Client on delivery.
- 5.2 If any of the Goods/Services are damaged or destroyed following delivery but prior to ownership passing to the Client, Amtrax is entitled to receive all insurance proceeds payable for the Goods/Services. The production of these terms and conditions by Amtrax is sufficient evidence of Amtrax's rights to receive the insurance proceeds without the need for any person dealing with Amtrax to make further enquiries.
- 5.3 Amtrax shall not be responsible for problems caused by changes in the operating characteristics of the hardware or operating system software used by the Client which are made after the release date of the version of the software, nor for problems in the interaction of the software with any other software.
- 6. Title**
- 6.1 Amtrax and Client agree that ownership of the Goods/Services shall not pass until:
- (a) the Client has paid Amtrax all amounts owing for the particular Goods/Services; and
- (b) the Client has met all other obligations due by the Client to Amtrax in respect of all contracts between Amtrax and the Client.
- 6.2 Where Amtrax has provided computer software and documentation (including, but not limited to, any content updates for such software), Amtrax retains ownership of the computer software and documentation, but grants a licence to the Client for use of the computer software and documentation for which the Client shall pay applicable licence fees. The Client will use any third-party software supplied by Amtrax, and identified as such, strictly in terms of the licence under which it is supplied.
- 6.3 Receipt by Amtrax of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then Amtrax's ownership or rights in respect of the Goods/Services shall continue.
- 7. Licence**
- 7.1 Amtrax may grant the Client a licence to use computer software referred to in clauses 6.2 and 11.1 in relation solely to the operation of the Client's business however, the Client shall not use nor make copies of such computer software in connection with any work or business other than the work or business specified in writing to the Client unless express approval is given in advance by Amtrax. Such licence shall terminate on default of payment or any other terms of this agreement by the Client.
- 8. Client's Disclaimer**
- 8.1 The Client hereby disclaims any right to rescind, or cancel any contract with Amtrax or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by Amtrax and the Client acknowledges that the Goods/Services are bought relying solely upon the Client's skill and judgment.
- 9. Defects**
- 9.1 The Client shall inspect the Goods/Services on delivery and shall within seven (7) days of delivery (time being of the essence) notify Amtrax of any alleged defect, omission, error, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Amtrax an opportunity to inspect the Goods/Services within a reasonable time following delivery if the Client believes the Goods/Services are defective in any way. If the Client shall fail to comply with these provisions the Goods/Services shall be presumed to be free from any defect or damage. For defective Goods/Services, which Amtrax has agreed in writing that the Client is entitled to reject, Amtrax's liability is limited to either (at Amtrax's discretion) replacing the Goods/Services or repairing the Goods/Services.
- 9.2 Goods/Services will not be accepted for return other than in accordance with 9.1 above.
- 10. Consumer Guarantees Act 1993**
- 10.1 If the Client is acquiring Goods/Services for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods/Services by Amtrax to the Client.
- 11. Intellectual Property**
- 11.1 Where Amtrax has supplied Goods/Services to the Client, all intellectual property rights, including copyright, relating to software and any associated manuals are the sole property of Amtrax. The software is supplied solely for the Client's internal use and the Client agrees not to do any of the following without the Seller's written consent:
- (a) copy the software; or
- (b) allow any third party to have access to the software; or
- (c) alter, modify, tamper with or reverse engineer the software; or
- (d) combine the software with any other software.
- 11.2 Where Amtrax has designed Goods specifically in accordance with the Client's instructions or existing software, then all intellectual property rights shall be the sole property of the Client.
- 11.3 The Client warrants that all designs or instructions to Amtrax will not cause Amtrax to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Amtrax against any action taken by a third party against Amtrax in respect of any such infringement.
- 12. Default & Consequences Of Default**
- 12.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of up to two point nine-five percent (2.95%) per calendar month (and at Amtrax's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 12.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by Amtrax.
- 12.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify Amtrax from and against all costs and disbursements incurred by Amtrax in pursuing the debt including legal costs on a solicitor and own client basis and Amtrax's collection agency costs.
- 12.4 Without prejudice to any other remedies Amtrax may have, if at any time the Client is in breach of any obligation (including those relating to payment), Amtrax may suspend or terminate the supply of Goods/Services to the Client and any of its other obligations under the terms and conditions. Amtrax will not be liable to the Client for any loss or damage the Client suffers because Amtrax has exercised its rights under this clause.
- 12.5 If any account remains overdue after thirty (30) days then an amount of the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.
- 12.6 Without prejudice to Amtrax's other remedies at law Amtrax shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Amtrax shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to Amtrax becomes overdue, or in Amtrax's opinion the Client will be unable to meet its payments as they fall due; or
- (b) the Client 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 Client or any asset of the Client.
- 13. Cancellation**
- 13.1 Amtrax may cancel any contract to which these terms and conditions apply or cancel delivery of Goods/Services at any time before the Goods/Services are delivered by giving written notice to the Client. On giving such notice Amtrax shall repay to the Client any sums paid in respect of the Price. Amtrax shall not be liable for any loss or damage whatever arising from such cancellation.
- 13.2 In the event that the Client cancels delivery of the Goods/Services the Client shall be liable for any loss incurred by Amtrax (including, but not limited to, any loss of profits) up to the time of cancellation.
- 14. Privacy Act 1993**
- 14.1 The Client authorises Amtrax to:
- (a) collect, retain and use any information about the Client, for the purpose of assessing the Client's creditworthiness or marketing products and services to the Client;
- (b) disclose information about the Client, whether collected by Amtrax from the Client directly or obtained by Amtrax from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 14.2 Where the Client is an individual the authorities under clause 14.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 14.3 The Client shall have the right to request Amtrax for a copy of the information about the Client retained by Amtrax and the right to request Amtrax to correct any incorrect information about the Client held by Amtrax.
- 15. General**
- 15.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 15.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 15.3 Amtrax shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Amtrax of these terms and conditions.
- 15.4 In the event of any breach of this contract by Amtrax the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Goods/Services.
- 15.5 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by Amtrax.
- 15.6 Amtrax may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 15.7 Amtrax reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Amtrax notifies the Client of such change.
- 15.8 The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if section 15(d) were omitted from the Contractual Remedies Act 1979.
- 15.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 15.10 The failure by Amtrax to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Amtrax's right to subsequently enforce that provision.