

## TERMS OF BUSINESS – TERMS & CONDITIONS

These are the Terms of Business under which we provide our services, stock, and other items.

### 1. DEFINITIONS AND INTERPRETATION

- 1.1. In these TERMS OF BUSINESS, the following words and terminology have the following meanings:
  - 1.1.1. "TERMS OF BUSINESS" is interchangeable with the generically used business term "Terms & Conditions" and refers to the provisions set out below or as changed or modified in accordance with clause 2.3 as well as related addendums included in this document (if provided in digital or printed form) or specifically on the web page located at <https://itnearu.nz/terms-conditions> on the internet;
  - 1.1.2. "WE", "US", "ITNEARU", "IT NEAR U" or "OUR" refers to our company, "IT NEAR U LIMITED"; or any of its employees, agents or duly authorised representatives and including all assigns and successors;
  - 1.1.3. "PERSONNEL" refers to the officers, employees, contractors (including subcontractors and their employees), professional advisers, representatives and agents of a person;
  - 1.1.4. "SITE" or "WEB SITE" refers to the website located at <https://ITnearU.nz> and any replacement or associated websites;
  - 1.1.5. "PRODUCTS" refers to any goods including hardware, software, equipment, inventory, services, subscriptions or other items provided or installed by us to/for the CUSTOMER; and
  - 1.1.6. "PPSA" refers to The Personal Property Securities Act 1999; and
  - 1.1.7. "GST" refers to the goods and services tax pursuant to the Goods and Services Tax Act 1985; and
  - 1.1.8. "BOOKING" refers to a single on-site appointment made by us for the purpose of providing SERVICES and/or PRODUCTS; and
  - 1.1.9. "SERVICES" refers to all services, consulting labour time and advice provided by ITNEARU to the CUSTOMER including the provision of installation services, remedial services, fault diagnosis services, cloud-based services including software as a service, support and maintenance services and labour associated with the supply of PRODUCTS and/or SERVICES by us to the CUSTOMER; and
  - 1.1.10. "CANCELLATION FEE" refers to a fee of \$50.00 (plus GST if applicable) for cancelling a BOOKING other than in accordance with clause 3.3 below; and

- 1.1.11. "CUSTOMER" refers to the party, be it an individual, company, or other recognized legal entity, purchasing the PRODUCTS and/or SERVICES and includes any person acting on behalf of and with the authority of that party and any of its authorised users;
- 1.1.12. "YOU" or "YOUR" refers to the CUSTOMER that requested/authorized the BOOKING;
- 1.1.13. "FEE" refers to the charges for time spent on each BOOKING as set out here plus any costs of PRODUCT or SERVICES where applicable;
- 1.1.14. "INCREMENTAL FEE" refers to the charge for each 15-minute-period after the booking fee for on-site or off-site work. The period of each booking will commence from the time our consultant arrives at your premises.
- 1.1.15. "OFF-SITE" refers to a location, either at our business premises or a secure, private environment at our technician/consultants' residential premises. Work relating to a booking may be completed off-site in return for a reduced hourly rate if this is agreed upon prior to undertaking this work;
- 1.1.16. "ON-SITE" refers to the address at which the BOOKING has been requested to undertake the SERVICES by the CUSTOMER;
- 1.1.17. "PRODUCT COST" or "PRICE" refers to the cost of the PRODUCTS and/or SERVICES payable by the CUSTOMER to ITNEARU and includes all disbursements including charges ITNEARU may pay to others on the Customer's behalf.
- 1.1.18. "INFORMATION" refers to personal information about yourself, your accounts, related services and subscriptions including usernames, passwords and anything else that is required to provide our SERVICES;
- 1.1.19. "BUSINESS DAY" refers to a day (other than a Saturday, Sunday or public holiday) on which registered banks are open for general business in Wellington, New Zealand.
- 1.1.20. "BUSINESS HOURS" refers to our active hours of business, from 8 am to 6 pm during BUSINESS DAYS in New Zealand.
- 1.1.21. "CONTRACT" refers to the supply of PRODUCTS and/or SERVICES from ITNEARU to the CUSTOMER in accordance with these TERMS OF BUSINESS and any other of our terms relating specifically to that PRODUCTS and/or SERVICES being supplied.
- 1.1.22. "PLANNED MAINTENANCE" refers to the maintenance carried out during standard maintenance windows as set by us from time to time.
- 1.1.23. "UNSCHEDULED MAINTENANCE" refers to the maintenance performed outside BUSINESS HOURS and the PLANNED MAINTENANCE windows.
- 1.1.24. "PAYMENT TERMS" refers to the agreed period that the CUSTOMER will settle their account for PRODUCTS and SERVICES rendered by ITNEARU.

- 1.1.25. "DUE DATE" refers to the date when a payment is due to be paid to ITNEARU as set out and agreed to by the CUSTOMER.
- 1.1.26. "INTELLECTUAL PROPERTY RIGHTS" refers to all intellectual property rights recognised by law (whether registered or not) including:
  - a. copyright;
  - b. design, patent, trademark, semiconductor, or circuit layout rights;
  - c. trade, business, company, or domain name;
  - d. trade secret;
  - e. moral right;
  - f. know-how, inventions, processes, confidential information (whether in writing, verbal or recorded in any form);
  - g. any other proprietary, licence or personal rights arising from intellectual activity in the business, industrial, scientific, information technology or artistic fields.
- 1.2. References to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended, re-enacted, or consolidated and to all statutory instruments made pursuant to it.
- 1.3. Words denoting the singular will include the plural and vice versa.
- 1.4. The words "in particular", "include" and "including" will not be construed as terms of limitation.
- 1.5. References to currency shall be to New Zealand dollars including GST of 15% unless otherwise specified.
- 1.6. Person includes a natural person, company, corporation, or other entity.

## 2. ACCEPTANCE

- 2.1. These TERMS OF BUSINESS together with any additional terms relating to any specific PRODUCT or SERVICE, form the basis of a contract between us and the CUSTOMER for the provision of any PRODUCTS and/or SERVICES to the CUSTOMER.
- 2.2. The CUSTOMER agrees to comply with these TERMS OF BUSINESS.
- 2.3. We may at our sole discretion, change, modify, add or remove any portion of these TERMS OF BUSINESS at any time. Any changes to the TERMS OF BUSINESS shall be effective as soon they are notified by publishing them on the WEB SITE.
- 2.4. It is the CUSTOMER's responsibility to check the TERMS OF BUSINESS on this WEB SITE from time to time for any changes. The CUSTOMER's continued use of the SERVICES or purchase of the PRODUCTS and/or SERVICES following the notification of any changes, deems the CUSTOMER to have accepted the revised TERMS OF BUSINESS.

- 2.5. On occasion the CUSTOMER may be prompted to click “I Accept” in relation to these TERMS OF BUSINESS. If prompted and the CUSTOMER does not accept, the CUSTOMER must not use our SERVICES or purchase the PRODUCTS and/or SERVICES.

### 3. BOOKINGS

- 3.1. Where you arrange a booking either by phone call, or via our web-site or on-line booking platform, you accept and agree to be bound by the conditions these TERMS OF BUSINESS.
- 3.2. Where you arrange a booking, we will try our best to arrive at the premises for that booking at the arranged time.
- 3.3. To cancel or reschedule a booking, you must advise us by calling our 0800 number or sending us an e-mail to [info@itnearu.nz](mailto:info@itnearu.nz) before the end of the previous BUSINESS DAY.
- 3.4. Where you fail to cancel a booking in accordance with clause 3.3, we reserve the right to charge you a cancellation fee. If charged, you must pay a cancellation fee for that booking.
- 3.5. We believe in the principle of quid-pro-quo and will not be unreasonable in charging a cancellation fee.

### 4. SERVICES

- 4.1. In consideration of the fees, we will perform the Services in accordance with these Terms and Conditions.
- 4.2. At the beginning (during the first 15 minutes) of the Booking:
- a. we will attempt to diagnose any problems described by you; and
  - b. we may provide an estimate of the time required to provide any Services; and
  - c. while we endeavour to get the best outcome, we do not guarantee any diagnosis or estimate of time will be accurate, however we will keep you informed before proceeding with work over and above the estimate previously given.
- 4.3. The duration of the Booking will be discussed with you. If the Services are not complete within that duration, we will discuss the options available, which may include extending that Booking, arranging another Booking, or abandoning the Services. You may stop a Booking at any time.
- 4.4. Regardless of clauses 4.2 or 4.3, once a Booking commences, you must pay the Fees for that Booking, including the Minimum Booking/Administration Fee.
- 4.5. To enable us to undertake the Services:
- a. you must provide us all information, assistance, co-operation and access to premises and equipment that we may reasonably require to undertake the Services; and
  - b. you, or some person over 16, must be present while we provide the Services.
- 4.6. We will use reasonable endeavours to achieve the objectives of the SERVICE, but we provide no guarantee, and we will not be liable for any failure to meet the objectives.

## 5. PRODUCTS

- 5.1. Where agreed with you, we will provide Products as part of a Booking and subject to these Terms and Conditions.
- 5.2. You agree that risk in any Products supplied by us passes to you immediately upon supply, activation, or installation.
- 5.3. Ownership of the Products will remain with us, and will not pass to you, until you have paid the Product Cost and other Fees associated with that Booking in cleared funds.
- 5.4. Should you decide after agreeing to purchase a product that you no longer wish to retain this product, we have no responsibility to take this product back, nor refund you for that product. Any refund or return of the product is at our sole discretion and a restocking fee of up to 15% may apply.

## 6. PAYMENT

- 6.1. We will provide a detailed statement of the Fees for each BOOKING as soon as possible at the end of the BOOKING and depending on your PAYMENT TERMS, payment for PRODUCTS and SERVICES shall be made in full by you to us in cleared funds without deduction or set-off for any reason, no later than the DUE DATE.
- 6.2. Any other amounts payable under these TERMS OF BUSINESS will be payable immediately after our SERVICES are completed.
- 6.3. Payment must be made in cash or by EFTPOS, Visa, Mastercard or Internet Bank transfer. We do not accept cheque payments.
- 6.4. If payment is made by credit card, then ITNEARU may recover the credit card fees or any other charges incurred.
- 6.5. When a CANCELLATION FEE is charged, payment is due immediately.
- 6.6. Interest may be charged on any amount owing at the rate of 5% above the current OCR rate per month or part month from the DUE DATE to the date of payment.
- 6.7. Any expenses and costs incurred by ITNEARU in the enforcement or attempted enforcement of any rights, powers or remedies contained in these TERMS OF BUSINESS shall be paid by the Customer, including solicitor's costs (on a solicitor-client basis) and debt collection agency fees.
- 6.8. Notwithstanding clause 6.1 ITNEARU may require a deposit in advance at its sole discretion.
- 6.9. Where any payment has not been made by the due date, ITNEARU may withhold the supply of PRODUCTS and/or SERVICES not yet delivered at its sole discretion.

## 7. AGENCY

- 7.1. The CUSTOMER authorises ITNEARU to contract on its behalf either as principal or agent with third party providers for products and/or services that may form the whole or part of the PRODUCTS or SERVICES being supplied under this contract.
- 7.2. Where ITNEARU enters into a contract of the type referred to in clause 7.1, the terms of such contract shall form part of this contract and the CUSTOMER agrees to pay any amounts due under any third party contract and agrees to be solely liable for payment of that third party contract.

## 8. WARRANTIES & LIABILITIES

- 8.1. The Consumer Guarantees Act 1993, the Fair-Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon ITNEARU which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on ITNEARU, ITNEARU's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- 8.2. The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Products or Services from ITNEARU for the purposes of a business in terms of section 43 of that Act.
- 8.3. Subject to clause 8.1:
  - 8.3.1. ITNEARU gives no warranty that the Products and/or Services will be fit for any particular purpose. The Customer acknowledges that it has performed its own investigation and made its own assessment of the applicability of the Products and/or Services for its own purposes.
  - 8.3.2. ITNEARU does not provide any guarantee and has no liability to the Customer in respect of the network connections and telecommunications links between the Customer and ITNEARU enabling access to the Services.
  - 8.3.3. ITNEARU does not guarantee error-free or uninterrupted use of the Products and/or Services. The Customer must immediately notify ITNEARU of such intermittent faults. The Customer agrees to meet ITNEARU's then-applicable charges for examining, investigating, or diagnosing intermittent faults (including travelling time or associated expenses), except where such charges are covered by a manufacturer's warranty and subject to clause 8.1.
- 8.4. Except to the extent that the law prevents ITNEARU from excluding liability, ITNEARU shall not be liable for any loss, cost, expense, liability or damage of any kind whatsoever whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss cost, expense, liability or damage arises directly or indirectly from Products and/or Services provided by ITNEARU to the Customer.

- 8.5. Under no circumstances will ITNEARU be liable to the Customer in contract, tort (including negligence) or otherwise for loss (whether direct or indirect) of profits, business or anticipated savings or for any indirect or consequential loss whatsoever.
- 8.6. The Customer shall indemnify ITNEARU against all claims and loss, cost, expense, liability, or damage of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause, whether caused or arising as a result of the negligence of ITNEARU or otherwise, which is brought by any person in connection with any matter, act, omission, or error by ITNEARU or its Personnel in connection with the Products and/or Services.
- 8.7. To the extent that ITNEARU is found liable for any reason for any loss, cost, expense, liability, or damage incurred by the Customer arising from any breach of this Contract or for any other reason, such liability is limited at the Customer's option to:
  - 8.7.1. The costs of replacing the Products in respect of which the obligation has been breached with a product of equivalent specification;
  - 8.7.2. The provision of the Services again; or
  - 8.7.3. The price for those Products and/or Services paid by the Customer.
- 8.8. The rights of the Customer described in clause 8.7, only apply if:
  - 8.8.1. the Products are returned, or a claim is made in writing to ITNEARU within 14 days of the Products and/or Services being provided;
  - 8.8.2. the Customer supplies the date and number of any invoice relating to the Products and/or Services;
  - 8.8.3. ITNEARU is given a reasonable opportunity to inspect the Products and/or alleged issue arising from the Services;
  - 8.8.4. the use of Products and/or Services by the Customer has been in accordance with the information, instructions and specifications supplied by ITNEARU; and
  - 8.8.5. the use of Products and/or Services has only been for the purpose for which they were designed.
- 8.9. The Customer shall not have the rights described in clause 8.7 if any fault damage or defect in the Products and or arising from the Services:
  - 8.9.1. is the result of alterations or modifications to the Products and/or Services and such alterations or modifications were not authorised in writing by ITNEARU;
  - 8.9.2. is the result of the use of other hardware, software, equipment or products in combination with the Products and/or Services supplied by ITNEARU and such use was not authorised in writing by ITNEARU; or
  - 8.9.3. has been caused by power surges or user error.

- 8.10. If the Customer permits any unauthorised third person to examine, investigate, diagnose, or repair any faults with the Products and/or arising from the Services without the prior written consent of ITNEARU. The Customer undertakes that it will be fully responsible for all ITNEARU's costs of rectifying the Products and/or Services should any such unauthorised action(s) take place.
- 8.11. Where Products are supplied under a manufacturer's warranty, the warranty is only to the extent and for the period specified in the manufacturer's warranty. The warranty period is measured from the date of delivery.
- 8.12. Any claim under a manufacturer's warranty shall only cover the repair or replacement costs as detailed in the manufacturer's warranty. The Customer acknowledges that such warranty shall not cover any of ITNEARU's labour costs or charges relating to the diagnosis of any faults or defects. The Customer shall pay the labour costs or charges incurred by ITNEARU associated with the diagnosis of any faults or defects.

## 9. INTELLECTUAL PROPERTY RIGHTS

- 9.1. The Customer acknowledges that all the Intellectual Property Rights in the Products and/or Services and the Site is owned, controlled, or licensed by or to ITNEARU. The Customer shall not in any way question or dispute the Intellectual Property Rights of ITNEARU in the Products and/or Services.
- 9.2. ITNEARU may from to time and at its discretion introduce modifications, enhancements or updates to the Products and/or Services or Site. Any modifications, enhancements or updates to the Products and/or Services or Site, whether carried out by ITNEARU or any other person, shall remain controlled by, licenced to, or the sole and exclusive property of ITNEARU.
- 9.3. The copyright of all content of the Site including but not limited to design, text, software, technical drawings, configurations, graphics, other files, and their selection and is owned by ITNEARU and/or is the proprietary property of its suppliers, affiliates, or licensors.
- 9.4. The Customer agrees that it shall not itself or through any subsidiary, agent or third party copy, modify, duplicate, create derivative works, decompile, disassemble, reverse engineer, sell, lease, license, sub-license or otherwise deal with the Intellectual Property Rights of ITNEARU in the Products, Services or Site, or any variations, modifications, copies, releases, versions or enhancements of the Products, Services or Site.
- 9.5. Trademarks owned by ITNEARU including "ITNEARU" and its associated logo (whether registered or unregistered) may not be copied, imitated, or used, in whole or in part, without ITNEARU's prior written permission.
- 9.6. The Customer agrees to indemnify ITNEARU against all loss, damage, liabilities, costs and expenses which ITNEARU may incur as a result of any breach of this clause 11.

## 10. Termination

- 10.1. We may immediately terminate the agreement between us if we:



- a. believe that there is any threat to the safety of any of our employees, contractors or representatives;
  - b. discover any pornographic, obscene, offensive or any illegal content;
  - c. determine the presence of unlicensed or illegal software or services;
  - d. consider that you are in breach of these Terms and Conditions;
  - e. find you are unable to pay your debts, or pose an unacceptable credit risk to us.
- 10.2. If we terminate the agreement, we will cease to undertake the Services however all Fees incurred up to that time will become immediately payable.

## 11. GENERAL

- 11.1. We will not be liable to you for any breach or failure to perform any of our obligations where such breach or failure is caused by force majeure, including (without limitation) inability to obtain supplies, war, civil commotion, terrorism, strike, lockout, other industrial act, weather phenomena or other act of God.
- 11.2. These Terms and Conditions contain the whole of the contract and understanding between you and us relating to the matters covered by these Terms and Conditions.
- 11.3. New Zealand law governs the formation, validity, construction and performance of these Terms and Conditions.
- 11.4. We may amend these Terms and Conditions from time to time. The current Terms and Conditions at any time are available on our website: [www.ITnearU.nz](http://www.ITnearU.nz)

**Last Updated: 7th March 2022**

## PRIVACY STATEMENT

Privacy Act 2020 and the Privacy Principles

We may collect personal information from you, including information about your:

- name
- contact information
- location
- computer or network
- interactions with us
- billing or purchase information

We collect your personal information in order to:

- enable administration and delivery of our services.

Providing some information is optional. If you choose not to enter passwords to computer, network, cloud, and service-related accounts, we'll be unable to perform IT services. We keep your information

safe by storing it in a secure, password-protected environment and only allowing the required management staff access to it.

You have the right to ask for a copy of any personal information we hold about you, and to ask for it to be corrected if you think it is wrong. If you'd like to ask for a copy of your information or to have it corrected, please contact us at [accounts@itnearu.nz](mailto:accounts@itnearu.nz), or call us at 0800420042, or mail us at PO BOX 22044, KHANDALLAH, 6441.

#### **FURTHER CLARIFICATION ON HOW TIME IS BILLED**

Note that we consult, that we charge for the actual time spent on a job /or booking, not for individual tasks, problems, or procedures whether resolved or unresolved. We don't charge "per desired outcome", but for "actual time spent".

Some procedures may take longer than the client expects, some take less. Sometimes things go smoothly, sometimes not. Sometimes there are mitigating circumstances out of our control that only arise, are only revealed during the process of doing the work, attempting a resolution.

We hire the best, most capable, knowledgeable employees that we can with a full support network to back them up. We always try to do work as efficiently and cost-effectively as possible, but we can't guarantee for a specific cost, nor a positive resolution for every job outcome. We can, however, usually offer a reasonable estimate and will advise if our estimates take longer than expected as soon as we are aware of complications.

For the same reasons, we also can't guarantee that every job will be completed in a specific timeframe. Our priority is always to get you up and running with the least cost possible.

Fortunately, bad incidents or outcomes are the exceptions as most of our jobs are to time and on cost and offer a desired positive outcome. This disclaimer is just for the few times it doesn't.