

Bluewater Systems Products Terms of Trade

1 Definitions:

1.1 "Bluewater" means Bluewater Systems Limited whose registered office is situated at Level 17, 119 Armagh St, Christchurch, New Zealand.

1.2 "Buyer" means the company who buy or agrees to buy the Goods from Bluewater.

1.3 "Conditions" means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by Bluewater.

1.4 "Goods" means the hardware products, including but not limited to, all media on which the Software is contained, ancillary equipment, accessories, spares, supplies and related documentation which the Buyer agrees to buy from Bluewater and which does not include Software.

1.5 "Software" means any operating system, utility or applications software delivered by Bluewater in machine-readable, object, printed or interpreted form and either incorporated within or with the Goods, or separately supplied, including related documentation.

2 THESE CONDITIONS SHALL APPLY to all contracts for the sale of Goods by Bluewater to the Buyer to the exclusion of all other terms and conditions including any terms and conditions which the Buyer may purport to apply under any purchase order, confirmation of order or similar document or implied by trade custom or course of dealing unless specifically agreed in writing by a duly authorised representative of Bluewater.

3.1 THE PRICE PAYABLE for the goods shall be those contained in Bluewater's applicable price list or other agreement for such Goods in effect at the time of dispatch. Bluewater shall have the right at any time to withdraw any discount from its normal prices and/or to revise prices to take into account any increases in costs.

3.2 Unless otherwise specified prices are quoted exclusive of GST and any other tax or duty.

3.3 Payment of each invoice shall be due and made in full without any deduction or set-off by the end of the month following the month in which the invoice was issued. No counterclaim of the Buyer may be set-off against any payment due under any contract without the written consent of Bluewater.

3.4 Any extension of credit allowed to the Buyer may be changed or withdrawn at any time.

3.5 Interest shall be payable on overdue accounts at the rate of 2% per month to run from the due date for payment thereof until receipt by Bluewater of the full amount whether or not after judgement.

4.1.1 DELIVERY dates specified in any quotation, order acceptance form or elsewhere are approximate only and not of any contractual effect. Unless otherwise agreed in writing Bluewater shall not be under any liability to the Buyer in respect of any failure to deliver on any particular date or dates. Bluewater shall not be obliged to make any deliveries if the aggregate amount of all invoices issued (whether or not due for payment) exceeds such credit limit as may have been established by Bluewater for the Buyer, or if any amount owing to Bluewater by the Buyer shall not have been paid on the due date.

4.1.2 Delivery is deemed to have taken place when the Goods arrive at the entrance to the Buyer's premises identified on the Buyer's purchase order form, or as otherwise agreed in writing between the parties, during the normal business hours of the country in which the premises are situated.

4.1.3 Risk of loss or damage to the goods shall pass to the Buyer on delivery as set out in Clause 4.2.

4.2 The Buyer shall insure such Goods to their full replacement value (naming Bluewater) as the loss payee).

5.1 TITLE TO GOODS shall not pass to the Buyer until payment in full of the price therefore (including any interest or other payment due under the contract). Until such payment the Buyer shall be subject to the provisions of Clauses 4.2, 4.3 and 4.4 hereof.

5.2 TITLE TO SOFTWARE WILL NOT PASS TO THE BUYER UNDER ANY CIRCUMSTANCES AND THE BUYER IS HEREBY PUT ON NOTICE THAT THE SUPPLY OF SOFTWARE, WHETHER BLUEWATER'S OWN OR THIRD PARTY SOFTWARE IS SUBJECT TO THE BUYER'S ACCEPTANCE OF BLUEWATER'S AND/OR BLUEWATER'S LICENSOR'S SOFTWARE LICENCE TERMS, WHICH TERMS WILL BE SUPPLIED SEPARATELY.

5.3 Bluewater reserves the right to re-possess any Goods in respect of which payment is overdue and for this purpose the Buyer grants a right and licence to Bluewater's servants and agents to enter all or any of its premises with or without vehicles during normal business hours. The provisions of this sub-clause shall continue in force notwithstanding termination of the relevant contract howsoever caused. Bluewater shall retain all its rights, title and interest in any patents, design rights, rights in confidential information, trademarks, semi-conductor topography rights, copyright and rights in databases, whether registered or unregistered and all rights having similar or equivalent effect that subsist anywhere in the world.

6.1 THE BUYER SHALL INDEMNIFY Bluewater against any and all liabilities, claims and costs incurred by or made against Bluewater as a direct or indirect result of Buyer's misuse of the Goods which involves any infringement or alleged infringement of any rights of any third party.

6.2 Bluewater shall have no liability to the Buyer in the event of the Goods infringing or being alleged to infringe the rights of any third party. In the event that the Goods are or may be the subject of patent, copyright, registered design, trademark or other rights of any third party Bluewater shall be obliged to transfer to the Buyer only such title as Bluewater may have which is necessary to enable the Buyer to use the Goods.

7.1 THE GOODS WILL CONFORM to Bluewater's Hardware Warranty and Repair Policy ("Bluewater's Hardware Warranty"). Except for the express warranties set out in Bluewater's Hardware Warranty Bluewater grants no other warranties relating to the Goods and all other conditions, warranties or other statements whatsoever, express or implied, by statute at common law or otherwise howsoever, relating to such defects in the Goods, are hereby excluded including, but not limited to, any implied warranties of satisfactory quality or fitness for a particular purpose.

7.1.1 Bluewater's total liability for breach of any warranties given by Bluewater in respect of any particular Goods shall be limited to the sums paid by the Buyer for such Goods as are supplied under this agreement.

8.1 TO THE MAXIMUM EXTENT permitted by applicable law and subject to the foregoing all conditions, warranties and representations express or implied by statute, common law or otherwise in relation to the Goods are hereby excluded and Bluewater shall be under no liability to the Buyer for any loss, damage, or injury, direct or indirect, resulting from defective workmanship or otherwise howsoever arising and whether or not caused by the negligence of its employees. BLUEWATER DOES NOT SEEK TO LIMIT OR EXCLUDE LIABILITY FOR DEATH OR PERSONAL INJURY ARISING FROM BLUEWATER'S NEGLIGENCE ANYWHERE IN THIS AGREEMENT.

8.2 To the maximum extent permitted by applicable law in no event shall Bluewater be liable for any for incidental, indirect, consequential, or special losses, costs, charges, claims, demands, fees, or expenses of any nature arising out of this agreement.

8.3 Bluewater shall not be liable to the Buyer:

(a) for defects in the Goods caused by any act, neglect or default of the Buyer or of any third party;

(b) for other defects in the Goods except as may be provided under the terms of Bluewater's Hardware Warranty; or

(c) for any defects in third party Goods.

8.4 Without prejudice to any of its right under these conditions Bluewater may at its option make good any shortage or non-delivery and/or as appropriate replace any Goods found to be damaged or defective.

9 IF ANY OF THE following events should occur:

(i) the Buyer commits an act of bankruptcy or compounds or enters into a deed of arrangement with his creditors or if a receiving order is made against him or if (being a company) an order is made or a resolution is passed for the winding-up of the Buyer (otherwise than for the purposes of amalgamation or reconstruction); or

(ii) a receiver or administrator is appointed of any of the Buyer's assets or undertaking or if circumstances arise which entitle a court or a creditor to appoint a receiver, manager or administrator or which entitles a court to make a winding-up order; or

(iii) the Buyer takes or suffers any similar or analogous action in consequences of debt; or

(iv) the Buyer commits any breach of this or any other agreement between Bluewater and the Buyer;

then Bluewater may without prejudice to any of its other rights:

(a) stop any Goods in transit; and/or

(b) suspend further deliveries; and/or

(c) terminate the rights of the Buyer under Clause 6; and/or

(d) by notice in writing to the Buyer terminate the contract or any other contract between Bluewater and the Buyer; and/or

(e) by its employees or agents enter upon or into any land, buildings or vehicles where the Goods or part or them are situated or are reasonably thought to be situated to retake possession of the same and the Buyer shall for such purposes notify Bluewater of the whereabouts of the Goods.

10 FORCE MAJEURE Neither party shall be liable for any failure or delay in its performance under this Agreement due to causes, including, but not limited to, acts of God, acts of civil or military authority, fires, epidemics, floods, earthquakes, riots, wars, sabotage, third party industrial disputes and governments' actions, which are beyond its reasonable control; provided that the delayed party: (i) gives the other party written notice of such cause promptly, and in any event within fourteen (14) days of discovery thereof; and (ii) uses its reasonable efforts to correct such failure or delay in its performance. The delayed party's time for performance or cure under this Clause 11 shall be extended for a period equal to the duration of the cause.

11 ALL CONTRACTS INCORPORATING these terms and conditions shall be governed by and construed in accordance with New Zealand Law and the parties hereby submit to the exclusive jurisdiction of the New Zealand Courts.