

1. Introduction

- 1.1 These Terms constitute the entire agreement between Simcro Tech and the Buyer relating to the supply of Goods by Simcro Tech and shall be incorporated into each contract between Simcro Tech and the Buyer for the supply of Goods and shall prevail over any of Simcro Tech's previous terms and conditions of sale. Simcro Tech may by notice in writing to the Buyer vary these Terms from time to time.
- 1.2 Receipt of an order from the Buyer will be acceptance by the Buyer of these Terms, despite anything stated to the contrary in the Buyer's inquiries or on the Buyer's orders unless Simcro Tech agrees otherwise in writing.
- 1.3 If there is any inconsistency between these Terms and any order submitted by the Buyer (whether in writing, verbally, or by electronic means) or any other arrangement between the parties, these Terms prevail unless otherwise agreed in writing by the parties.
- 1.4 In these Terms:
- (a) **Buyer** means the individual, company or other entity purchasing goods from Simcro Tech;
 - (b) **CIF terms** means the "Cost Insurance and Freight" provisions of the Incoterms;
 - (c) **CIP terms** means the "Carriage and Insurance Paid to" provisions of the Incoterms;
 - (d) **DDU terms** means the "Delivered Duty Unpaid" provisions of the Incoterms;
 - (e) **DDP terms** means the "Delivered Duty Paid" provisions of the Incoterms;
 - (f) **Domestic Buyer** means a Buyer based in New Zealand where the delivery of the Goods ordered by that Buyer is to be effected in New Zealand;
 - (g) **EXW terms** means the "Ex Works" provisions of the Incoterms;
 - (h) **FOB terms** means the "Free on Board" provisions of Incoterms;
 - (i) **Goods** means the goods supplied by Simcro Tech to the Buyer under these Terms;
 - (j) **Incoterms** means the 2000 revision of the International Chamber of Commerce's official rules for the interpretation of trade terms;
 - (k) **International Buyer** means a Buyer who is not a Domestic Buyer;
 - (l) **Relevant Incoterms** means, in respect of any Goods, the Incoterms on which those Goods were ordered under clause 2.1(b), being CIF terms, CIP terms, DDU terms, DDP terms, EXW terms or FOB terms (as the case may be).
 - (m) **Simcro Tech** means Simcro Tech Limited; and
 - (n) **Terms** means these terms and conditions for the sale of Goods, as amended from time to time in accordance with clause 1.1.

2. Orders

- 2.1 **Orders.** Where the Buyer wishes to purchase Goods from time to time it will place an order for the Goods with Simcro Tech. Orders must:
- (a) contain all necessary information to assist Simcro Tech to fulfil the order; and
 - (b) subject to clause 2.2 and without limiting clause 2.1(a), specify whether the Buyer is ordering Goods on CIF terms, CIP terms, DDU terms, DDP terms, EXW terms or FOB terms.
- 2.2 **Domestic Buyer or International Buyer.** Where the Buyer is a Domestic Buyer, the Buyer may only make orders on CIP terms or EXW terms. Where the Buyer is an International Buyer, the Buyer may only make orders on CIF terms, CIP terms, DDU terms, DDP terms or FOB terms.
- 2.3 **Acceptance.** Orders are subject to acceptance by Simcro Tech in its sole discretion and such acceptance must not be unreasonably withheld or delayed by Simcro Tech. Acceptance or rejection of an order by Simcro Tech may be provided verbally or in writing. Once accepted, an order shall form a part of these Terms. Simcro Tech is under no obligation to enquire as to the authority of any person placing an order on behalf of the Buyer.

3. Price and supply

- 3.1 **Price.** The prices charged by Simcro Tech for Goods will be Simcro Tech's standard price for supplies of those Goods under the Relevant Incoterms as last notified to the Buyer before the date of that order and recorded on the written order confirmation issued by Simcro Tech to the Buyer (the "Price"). The Buyer shall pay the Price for the Goods, plus any goods and services tax or other sales tax chargeable on the Goods, in accordance with clause 4.
- 3.2 **Supply.** The Goods will be supplied in accordance with the Relevant Incoterms which terms include (without limitation) provisions as to the method of delivery, insurance obligations and point at which risk in the Goods passes to the Buyer.
- 3.3 **Insurance proceeds.** Subject to clause 3.2, the Buyer must insure the Goods in the name of Simcro Tech for their full value effective from the time at which the risk in the Goods pass to the Buyer pursuant to the

relevant Incoterm to the time that the Price of those Goods has been paid in full by the Buyer. If any Goods are damaged or destroyed while at the Buyer's risk and prior to payment in full of the Price of those Goods by the Buyer, then, without prejudice to any of its other rights or remedies under these Terms or otherwise, Simcro Tech shall be entitled to receive all insurance proceeds payable in respect of such damage or destruction, whether or not the Price for those Goods has become payable under these Terms.

4. Terms of payment

4.1 **Payment instalments.** The Buyer agrees to pay Simcro Tech for all Goods in respect of which its orders have been accepted by Simcro Tech, by electronic transfer in cleared funds to the bank account notified in writing by Simcro Tech for this purpose and in a currency agreed by the parties in writing (which currency shall be New Zealand dollars for Domestic Buyers). Where the Buyer is an International Buyer, the Price is to be paid to Simcro Tech by the Buyer in accordance with this clause within:

- (a) 35 days after the date on which the Goods are despatched where transport is by air freight; or
- (b) 55 days after the date on which the Goods are despatched where transport is by sea freight.

Where the Buyer is a Domestic Buyer, the Price is to be paid to Simcro Tech by the Buyer by the 20th day of the month following the month in which the Goods were delivered.

4.2 **No deductions or set-off.** The Buyer agrees that it is not entitled to withhold payment or to make any deduction from the purchase price for the Goods or claim any set-off without Simcro Tech's prior written consent.

4.3 **Default interest.** Without limitation to Simcro Tech's other legal or equitable rights or remedies, the Buyer must pay default interest on overdue payments at 20% per annum, calculated on a daily basis from the date payment was due until the date payment is made. The Buyer must on demand pay to Simcro Tech all costs (including legal costs on a solicitor and own client basis) incurred by Simcro Tech in collecting or attempting to collect any overdue payments.

4.4 **Non-delivery if payment in arrears.** Simcro Tech may refuse to deliver Goods ordered by the Buyer if payment of any monies owing to Simcro Tech by the Buyer is in arrears.

5. Retention of title of Goods supplied to International Buyers

5.1 **Application of clause.** This clause 5 only applies in respect of Goods supplied to an International Buyer.

5.2 **Retention of title.** Property in the Goods is retained by Simcro Tech until all monies owing by the Buyer to Simcro Tech for any reason from time to time have been paid in full ("Payment Date").

5.3 **Bailee.** Subject to clause 5.4, the Buyer must, until the Payment Date, hold the Goods as bailee for and on behalf of Simcro Tech and must store the Goods in a manner that enables them to be identified as Simcro Tech's property.

5.4 Authority to sell.

- (a) The Buyer may sell the Goods before the Payment Date if the sale is genuine and in the ordinary course of its business and the proceeds of the sale exceed the price payable by the Buyer to Simcro Tech for the Goods.
- (b) The authority granted in clause 5.4(a) will be revoked by Simcro Tech without the need for any notice if Simcro Tech deems the credit of the Buyer to be unsatisfactory or an event as specified in clause 5.6 occurs in respect of the Buyer.

5.5 **Proceeds of sale.** Where Goods are sold by the Buyer under the authority granted in clause 5.4, then as a result of the Buyer holding those Goods as fiduciary agent and bailee of Simcro Tech, any book debt created on the sale of the Goods and the proceeds of sale when received by the Buyer shall be held on trust for Simcro Tech by the Buyer. Such proceeds shall be placed in a separate bank account and:

- (a) first, applied towards the satisfaction of all indebtedness of the Buyer to Simcro Tech under these Terms; and
- (b) secondly, be retained by the Buyer.

5.6 Rights on default. If the Buyer:

- (a) defaults in the due payment of any moneys payable to Simcro Tech, whether under these Terms or otherwise; or
- (b) enters into any composition, arrangement or compromise with the Buyer's creditors; or
- (c) does any act which would render the Buyer liable to be put into liquidation or if a resolution is passed or a petition is filed for the Buyer's liquidation or a receiver is appointed over all or any of the Buyer's assets,

Simcro Tech may, without prejudice to any other right Simcro Tech has at law or in equity, at Simcro Tech's option, retake possession of any Goods that have not been sold by the Buyer and resell the same to recover any amounts outstanding to Simcro Tech, and the Buyer irrevocably authorises Simcro Tech, as the Buyer's agent, to enter into the premises where such Goods are stored and remove the Goods for that purpose

without being responsible for any damage reasonably caused in doing so. The Buyer shall indemnify Simcro Tech for all such money and all costs, charges, expenses and all claims and losses suffered by Simcro Tech in exercising its rights under this clause 5.6.

6. Security interest in Goods supplied to Domestic Buyers

- 6.1 **Application of clause.** This clause 6 only applies in respect of Goods supplied to a Domestic Buyer.
- 6.2 **Security Interest:** The Goods, and all of the Buyer's present and future rights in relation to the Goods, are subject to a continuing security interest in favour of Simcro Tech for the performance of the Buyer's obligation to make payment to Simcro Tech of all monies owing by the Buyer to Simcro Tech for any reason from time to time ("**Security Interest**").
- 6.3 **Registration:** The Buyer acknowledges that Simcro Tech may, at Simcro Tech's cost, register its Security Interest in the Goods, and all of the Buyer's present and future rights in relation to the Goods, on the Personal Property Securities Register established under the Personal Property Securities Act 1999 ("**PPSA**").
- 6.4 **Obligation to assist:** The Buyer shall do all things and provide all information as Simcro Tech may require for the purpose of securing to Simcro Tech the Goods and the performance of all of the Buyer's obligations under these Terms, and for the purpose of ensuring that Simcro Tech has a perfected first ranking Security Interest in the Goods and any proceeds.
- 6.5 **No change of name:** The Buyer shall not change its name or other details without first notifying Simcro Tech in writing at least 14 days before such change takes effect.
- 6.6 **Application of PPSA:** The Buyer:
- (a) agrees that nothing in sections 114(1)(a) (to receive notice of sale or goods), 116 (to receive a statement of account), 120(2) (to receive notice of proposal to take goods), 133 (to reinstate security agreement) and 134 (limit on reinstatement) of the PPSA will apply to these Terms or the Security Interest under these Terms;
 - (b) waives all of the Buyer's rights under sections 121 (to object to proposal), 125 (damage to goods on removing accession), 129 (notice of removal of accession), 131 (court order preventing removal of accession) and 132 (redemption of collateral) of the PPSA; and
 - (c) waives the Buyer's right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the Security Interest under these Terms.
- 6.7 **Definitions:** The terms accession, financing statement, personal property, verification statement and security interest have the meanings given to them under the PPSA.
- 6.8 **Obligations of Buyer:** The Buyer will:
- (a) maintain and keep the Goods in good working order and condition and protected against theft, loss or damage; and
 - (b) permit Simcro Tech at all reasonable times by its agents, employees and officers to enter upon any land or premises owned or occupied by the Buyer to view and inspect the Goods.
- 6.9 **Negative covenants:** The Buyer will not:
- (a) permit to subsist any other security interest in relation to the Goods; or
 - (b) except in the normal course of business, sell, lease or dispose of, or permit the sale, lease or disposal of, the Goods.

7. Warranties

- 7.1 **Goods manufactured in accordance with specifications.** Simcro Tech warrants that the Goods sold to the Buyer will comply in all material respects with the relevant specifications for the Goods notified by Simcro Tech to the Buyer in writing from time to time and will be free from faulty material or workmanship. Except as provided in this clause 7.1, Simcro Tech gives no warranty or undertaking and makes no representation regarding the Goods.
- 7.2 **Defects.** The Buyer will give Simcro Tech written notice of any failure of any Good to comply with the warranty set out in clause 7.1 within 14 days of receipt of any Goods and return the defective or non-complying Goods to Simcro Tech's premises for inspection and testing. Simcro Tech will, in its sole discretion, either:
- (a) repair or replace the defective or non-complying Goods in question at its own cost and expense; or
 - (b) refund the Buyer the invoice price of those Goods.

If the Buyer does not notify Simcro Tech of such failure within the time specified in this clause 7.2, the Buyer will be deemed to have accepted the Goods delivered as being free of defects and complying with the relevant specifications.

7.3 **Simcro Tech's liability limited.** Simcro Tech's only liability to the Buyer will be:

- (a) where Simcro Tech becomes unable to supply Goods in respect of which a portion of the Price has already been paid to Simcro Tech, in which case Simcro Tech's maximum liability is limited to that portion of the Price of those Goods that the Buyer has already paid to Simcro Tech; and
- (b) for any breach of the warranty set out in clause 7.1, in which case Simcro Tech's maximum liability is limited, at the option of Simcro Tech, to the replacement of any such defective or non-complying Goods or payment of direct costs and losses of the Buyer not exceeding the invoice price of the relevant Goods.

Except as provided in this clause 0, Simcro Tech will not be liable to the Buyer under these Terms, or in tort (including negligence) or otherwise.

7.4 **No representations by Buyer.** The Buyer will not make any representation or give any guarantee, warranty or other undertaking in relation to the Goods unless that representation, guarantee, warranty or undertaking is supplied by Simcro Tech in writing. Without any limitation to the generality of the forgoing the Buyer shall not do any act or make any omission which gives rise or might give rise to any liability on the part of the Buyer and/or Simcro Tech under the Consumer Guarantees Act 1993 (New Zealand). The Buyer shall indemnify Simcro Tech in respect of any liability (including any costs and expenses) incurred as a result of the Buyer's breach of this clause 7.4

7.5 **Supply for business purposes.** The supply of Goods by Simcro Tech to the Buyer under these Terms or otherwise is for business purposes and the provisions of the Consumer Guarantees Act 1993 (New Zealand) will not apply to these Terms.

7.6 **Implied warranties excluded.** If:

- (a) any condition or warranty is implied into these Terms under any trade practices, sale of goods, fair trading or other applicable legislation and cannot be excluded; or
- (b) notwithstanding the other provisions of this clause 7, Simcro Tech has any liability to the Buyer, then to the fullest extent permitted by law the liability of Simcro Tech for claims by the Buyer for breach of the condition or warranty so implied or otherwise will be limited at the option of Simcro Tech to replacement of such defective or non-compliant Goods or payment of direct costs and losses not exceeding the invoice value of such defective or non-complying Goods.

8. Intellectual property

8.1 The Buyer acknowledges that neither it nor anyone it is responsible for has, or will acquire, any right, title or interest in Simcro Tech's intellectual property (including any intellectual property in the Goods), and neither these Terms nor the Buyer's use of Simcro Tech's intellectual property transfers any title or ownership in any of the same to the Buyer.

9. Force majeure

9.1 **No liability for delay.** Neither party shall be liable for any delay or failure to perform its obligations under these Terms (except for an obligation to pay monies) if such delay is due to any circumstances beyond the reasonable control of the party claiming suspension, which prevents, hinders or interferes with the performance by the party claiming suspension of its obligations under these Terms, including, without limitation, an act of God, fire, earthquake, flood, lightning, explosion, act of government or state, war, act of terrorism, civil commotion, insurrection, embargo, sabotage, shortages of, prevention from or hindrance in obtaining any raw materials, energy or other supplies ("**Force Majeure**").

9.2 **Parties to give notice of Force Majeure.** If either party is unable to perform its duties and obligations under these Terms due to Force Majeure, such party shall give written notice to the other. Such notice shall state the nature, and expected duration of Force Majeure and the obligation affected by such Force Majeure.

9.3 **Parties to use reasonable endeavours.** During the continuance of such Force Majeure, the obligation affected by Force Majeure shall be suspended, but the party whose obligation is so affected shall take all reasonable steps to resume performance of its obligations without delay on termination of the event of Force Majeure.

9.4 **Termination.** If a delay or failure by a party to perform its obligations due to Force Majeure exceeds 30 days, either party may terminate any order for Goods affected by such Force Majeure immediately on notice in writing to the other party.

10. Miscellaneous

10.1 **Severability.** In the event of the invalidity of any part or provision of these Terms such invalidity does not affect the enforceability of any other part of these Terms.

10.2 **Assignment by Simcro Tech.** Simcro Tech may assign all or part of its obligations and rights under these Terms.

10.3 **United Nations Convention.** The United Nations Convention on Contracts for the International Sale of Goods does not apply to these Terms.

10.4 **No waiver.** The failure by Simcro Tech at any time to:

- (a) enforce or insist upon the strict observance of any provisions of or any right in respect of or the remedying of any breach or non performance of these Terms; or
- (b) exercise any election or discretion under these Terms,

does not operate as a waiver of those matters or of any of the rights of Simcro Tech under these Terms. A waiver is only effective if in writing. Any effective waiver provided will not constitute a waiver of any subsequent or continuing right, remedy, election, discretion or power

10.5 **Governing law.** These Terms will be governed by New Zealand law and the Buyer agrees to submit to the exclusive jurisdiction of the New Zealand Courts.

11. Privacy Act 1993 (New Zealand)

11.1 **Simcro Tech may obtain information.** The Buyer authorises Simcro Tech to obtain from persons the Buyer nominates, all information Simcro Tech reasonably requires to assess the Buyer's credit worthiness, and for those persons to release that information.

11.2 **Implications of failure to provide information.** The Buyer is under no obligation to give Simcro Tech, or authorise the release of, the information Simcro Tech has asked for, but if the Buyer fails to do so, Simcro Tech may refuse to allow credit.

11.3 **Use of information.** Simcro Tech will use the Buyer's personal information for purposes relating to the Buyer's dealings with Simcro Tech including direct marketing. The Buyer authorises Simcro Tech to release the Buyer's personal information to third parties for those purposes.

11.4 **Location of information.** All the Buyer's personal information will be held by Simcro Tech at 6-8 Latham Court, Hamilton where it can be inspected and corrected by the Buyer.

11.5 **Right of access.** The Buyer (if an individual) has the right to access and request the correction of his or her information held by Simcro Tech.