

Zelan Ltd. - Terms & Conditions

1) Definitions

- a) The “Supplier”, is Zelan Ltd., 165 Palmerston St., Westport 7825, New Zealand.
- b) The “Customer”, is the individual or legal entity purchasing Goods and/or Services.
- c) “Goods”, are tangible/physical assets supplied to the Customer by the Supplier.
- d) “Service/Services”, are intangible assets, subscriptions, consultancy work or labouring work provided to the Customer by the Supplier.

2) Pricing

- a) Business Accounts
Prices given for Goods and/or Services are excluding GST. GST will be added at the rate prevailing on the day of invoice issue.
- b) Personal Accounts
Prices given for Goods and/or Services are including GST. However, if the GST rate changes between the date of issuing estimates and the date of invoice or subsequently during any service period, the Supplier reserves the right to alter the amount payable to reflect the prevailing GST rate at date of invoice or subscription renewal.
- c) Estimates
All estimates provided are specimen only, unavoidable changes to supply prices will be reflected in the final invoice. If it is likely the final invoice will exceed 110% of the estimate or other threshold as mutually agreed, the Supplier will seek further approval before proceeding. Once estimates are approved, any bespoke work undertaken or Goods ordered may attract a cancellation fee of up to 100%.
- d) Returned Goods
All Goods ordered for a specific job that are deemed surplus to requirements may attract a fee of up to 100% of the cost of the goods plus return shipping costs, depending on the returns policy of third party suppliers. The Supplier may agree a lower cancellation/restocking fee where Goods are of generic nature and can be resold within a reasonable timeframe.

3) Payments

The Supplier accepts payments via Direct Bank Credit, Direct Debit or Credit Card as detailed on invoices or web payment pages. Cash payments may be made at the Supplier's bank, providing that the Customer pays any service charges imposed by the bank for doing so. If not paid at time of deposit, any bank fees imposed will be added to the Customer's balance and an additional administrative charge may also be applied. The Customer Account Code and/or invoice number must be clearly indicated with all payments. No responsibility can be taken for payments where the source cannot easily be identified and funds attributed to a Customer's account. Payments are normally reconciled with invoices within 5 working days; Customers should monitor their "My Account" page on the Supplier's website to ensure payments reach their account and notify the Supplier in the event they do not. Payments will be credited to the oldest outstanding invoice, unless specific instructions are provided in writing or a specific invoice has been mutually agreed as "in dispute".

a) Standard Services

New Customers may be subject to reference and/or credit checks at the discretion of the Supplier.

i) Pre-paid

All pre-paid Services must be fully paid in advance before the start of any service period. Services will be automatically suspended if payment is not received before commencement of the next service period. Service periods run on either a weekly or calendar month basis starting from the preceding Midnight on the 1st day of service.

ii) Post-paid

All post-paid Goods and/or Services must be paid by the end of business on the Due Date on the invoice or end of business on the next normal working day where the Due Date is not a normal working day, the Due Date is normally 7 days from invoice date. Any dispute regarding an invoice must be raised before the Due Date. Overdue invoices will attract interest charges at 2% per calendar month calculated weekly until settled, unless mutually agreed as "in dispute". If an invoice is more than 28 days overdue, the Supplier may refer the matter to Debt Recovery Agents, the Customer will be liable for the full cost of any debt recovery charges including penalty interest and the debt may be reported to a Credit Scoring Agency.

b) Bespoke Goods/Services

Due to their nature, bespoke Goods and/or Services may have a significant lead time and upfront expenditure by the Supplier, in these circumstances the Supplier or its third party suppliers may require a security deposit to be paid before commencement of work or ordering Goods for use on the project. For large projects, milestones and interim invoices will be defined in the Statement of Works.

4) Documents

Invoices, receipts, credit notes, statements, estimates and other documentation will normally be emailed. Customers requiring hard copy documents via NZ Post or Fax may, at the Supplier's discretion, be subject to an administration fee of \$10 excluding GST per document supplied. Where documents are emailed or faxed, it is assumed that the documents have been received 1 business day after sending. Documents sent via NZ Post are assumed to have been received 2 business days after posting.

5) Equipment Title / Intellectual Property Rights

The title to any equipment supplied for the purpose of providing Services and/or Intellectual Property Rights, remain in the ownership of the Supplier and/or other third party suppliers in perpetuity, unless specifically waived in writing and until paid for in full. Failure to surrender or allow access to recover Supplier provided equipment at the termination of service, will give rise to a charge of up to 100% of the equipment replacement value at time of termination.

6) Transfer of Service to New Property Owner/Occupier

- a) The normal cancellation period for the outgoing Customer and/or minimum contract cancellation charges may be waived at the Supplier's discretion, provided that:
 - i) the new Customer is eligible for service and
 - ii) signs up for at least the outstanding minimum contract period, if any, and
 - iii) the value of Services provided to the incoming Customer is equal to or exceeds that of the outgoing Customer.
- b) Service may be transferred to a new property owner/occupier without an installation charge providing the following conditions are met:
 - i) both Customers contact the Supplier prior to the changeover date giving at least 7 days notice and
 - ii) the outgoing Customer has met all their obligations under this agreement prior to the transfer date and
 - iii) the incoming Customer meets the Supplier's criteria for providing service, i.e. either subscribes to pre-paid Services or any references/credit checks are satisfactory for post-paid Services.

7) Service Termination by the Customer

Clause 7 and its sub-clauses are only operable in the event one or more sections of Clause 6 are not satisfied:

- a) Cancellation prior to the end of the minimum contracted period will result in the loss of any installation discounts, plus 50% of the Service charges for the remaining minimum contracted period will become payable. Alternatively, there may be a fixed cancellation fee as detailed in any published offer which differs from these standard provisions.
- b) Cancellation requests must be provided in writing with at least one calendar month notice. Acceptance of the cancellation by the Supplier will be deemed to have taken place by the issue of a final invoice and payment by the Customer of all outstanding sums due.
- c) At the end of the minimum contract period, this agreement will remain in force on a month by month basis until cancelled in writing by the Customer giving one calendar month notice.

8) Service Termination or Suspension by the Supplier

Where possible, the Supplier will give one calendar month notice, but may be at no or short notice due to circumstances beyond its control. Service termination or suspension may happen where:

- i) it is deemed the Service is no longer economically viable to the Customer's location or
- ii) the Customer has breached and not remedied the Supplier's "fair usage" policy or
- iii) the Customer allows the Service to be used, either knowingly or unknowingly, for purposes that would be a breach of Criminal or Civil Law in any jurisdiction that may claim authority or
- iv) the Supplier considers the payment history of the Customer has become unsatisfactory. The Customer remains liable for any outstanding account balance.

9) Service Levels

The Supplier relies on a number of third party suppliers for the provision of Services. The Supplier is not responsible for failures outside of its control, particularly at times of adverse weather conditions or seismic events. Every effort is made to provide a reliable service, however by its nature, rural network Services are significantly more at risk to failure than in densely populated areas.

- a) Critical failures will be attended to as soon as safely practical. Due to the location of many of the Supplier's assets, service restoration can be delayed by adverse weather conditions and/or delays in obtaining spare parts from suppliers. In the event of a major weather or other natural/manmade event, where work load exceeds available resources, the Supplier will prioritise service restoration as appropriate to the situation prevailing.
- b) Minor failures will usually be attended to within 5 business days or as agreed with the Customer when the failure is reported.
- c) The Supplier is not responsible for any gradual deterioration in service due to trees or other foliage growth in the wireless signal path nor for any interruption to the signal path due to natural event or third party actions, e.g. a building being erected or other temporary/permanent obstruction. The Customer must ensure that a clear signal path is maintained, including on any third party property, as may be directed by the Supplier at the commencement of service. The clear distance surrounding the wireless path may need to be up to 10 metres depending on distance from the transmitter. Where an obstruction is permanent and no remedy possible, the Supplier may be able to re-route services, however the costs of doing so may be passed on to the Customer.
- d) Refunds may be made at the discretion of the Supplier, but in no circumstance will any refund exceed the monies paid by the customer for the service period affected. Problems must have been notified to the supplier within 5 working days of the incident with full details of the time, date and nature of any outages or issues for a refund to be considered.

10) Fair Use Policy

To ensure fair and equitable access to limited bandwidth, the Supplier may apply restrictions or throttling to Customer connections where it is deemed they are significantly exceeding the average usage for connections in a specific geographical location and giving rise to a degradation of service to other Customers. Customers are required to install and maintain a high quality Anti-Virus product on all connected devices and use other software tools to periodically scan for any Adware, Spyware and other Malware that may unnecessarily consume bandwidth. Sometimes throttling can be ineffective; in this case Customers will be informed of any breaches of the policy and given an opportunity to remedy the situation before Service suspension or termination is considered. In extreme circumstances where there is severe degradation of Service to other Customers, a Customer's Service may be suspended without notice until remedial measures can be applied.

11) Data Loss

Whilst the Supplier has provisions for archiving Customers' Data, e.g. emails or other data contained on the Supplier's servers, it remains the responsibility of the Customer to ensure that they also maintain adequate archives of vital data. The Supplier takes no responsibility for data loss, except where a Customer has paid for specific premium backup Services. In the event individual non-premium Customers lose data, under some circumstances it may be possible to recover data from archives, the cost of recovery will be charged at the Supplier's standard hourly consultancy rate. Where there is a more widespread failure, data will be restored free of charge as part of the Supplier's normal recovery process, however a significant volume of data may be irretrievably lost between the failure time and the time of the preceding archive.

12) Internet Security & Incoming Data Services

The Supplier maintains a comprehensive Firewall which should prevent known Internet Security threats. However, this is a continually evolving environment and new security threats can emerge at any time. Unsolicited incoming data connections are barred for all Customers, except where there is a specific agreement, this will likely prevent many online games and other software that is not uPNP aware from fully working. Changes to Firewall settings to allow specific incoming connections often require considerable effort to setup and maintain and may require additional equipment to be installed. Requests for specific changes may attract installation and/or setup and ongoing administrative/subscription charges.

13) Privacy Act

The Customer authorises the Supplier to collect, retain, and use personal information about the Customer for the following purposes only:

- i) assessing the Customer's creditworthiness.
- ii) disclosing to a third party details of this agreement and any subsequent dealings it may have with the Supplier for the purpose of recovering amounts payable by the Customer and providing credit references.
- iii) Marketing Goods and Services provided by the Supplier to the Customer.
- iv) The Customer, if an individual, has a right of access to information about the Customer held by the Supplier. The Customer may request correction of that information and may require that the request be stored with that information. The Supplier may charge reasonable costs for providing access to that information.

14) Legal Authority

The person signing up to this agreement warrants that they are legally authorised to do so, either by virtue that this is a personal agreement or that they are properly authorised by the legal entity or individual they are representing, in the event it transpires they are not authorised, they will be personally liable. For the avoidance of any doubt, for company/business contracts at least two authorised people should sign. The Customer further warrants that they have obtained any necessary permits or consents from other entities, e.g. Landlord or regulatory authorities.

15) Legal Indemnity

The Customer indemnifies the Supplier and takes full legal responsibility for the usage of the Services provided and any consequences of a breach of Criminal or Civil Law in any jurisdiction that may arise, by themselves or anyone they have allowed to gain access to the Services or in their failure to obtain appropriate permissions and/or consents/permits.

16) Communications

The Customer shall provide and maintain current email, phone and postal/physical address information to enable efficient and timely communication. Communications from the Supplier to the Customer will normally be via Email. Contact details for communications to the Supplier may be found on the Supplier's website, www.zelan.co.nz and a Contact Form is also available there.

17) Warranties

- a) Where equipment/cabling is installed at the Supplier's expense at the Customer's location for the purpose of providing Services, faults will be rectified at the Supplier's expense except where the equipment/cabling:
 - i) has been subject to abuse or
 - ii) usage outside of its normal purposes or
 - iii) failed due to negligence or inaction by the Customer or anyone permanently/temporarily at the service location or
 - iv) failed due to any negligence or inaction on the part of agents/contractors/employees appointed/engaged by the Customer or

- v) has been damaged by an event that would normally be covered by Buildings or Contents Insurance. It is the Customer's responsibility to ensure that adequate insurance cover is obtained and maintained or alternatively assume full liability.
- b) Where Goods supplied for purchase are of a kind ordinarily acquired for personal, domestic or household use or consumption in accordance with the Consumer Guarantees Act 1993 and the Consumer Guarantees Act 1993 applies to this contract:
 - i) if any of the Goods fail to comply with any guarantee in the Consumer Guarantees Act, the Supplier will repair or replace those Goods;
 - ii) without excluding the Supplier's obligations under the Consumer Guarantees Act 1993, the Customer acknowledges that the Supplier does not provide any Express Guarantees (as defined in that Act) other than those expressly confirmed by the Supplier in writing;
 - iii) if the Goods are acquired by the Customer for business purposes, the Customer agrees that the Consumer Guarantees Act 1993 does not apply;
 - iv) if the Customer supplies the Goods in trade to a person acquiring them for business purposes, it must be a term of the Customer's contract that the Consumer Guarantees Act 1993 does not apply in respect of the Goods; and
 - v) if the Customer supplies the Goods to any person, the Customer must not give or make any undertaking assertion or representation in relation to the Goods without the Supplier's prior approval in writing, and the Customer must give the person buying the Goods such product information relating to the Goods as the Supplier requires, and the Customer agrees to indemnify the Supplier against any liability or cost incurred by the Supplier under the Consumer Guarantees Act 1993 as a result of any breach by the Customer of these obligations.
- c) The following terms apply wherever the Consumer Guarantees Act 1993 does not apply to this contract, or where the following terms are not inconsistent with the Consumer Guarantees Act 1993:
 - i) Defective Goods or Goods which do not comply with the contract may at the Supplier's discretion be repaired or replaced, or the price refunded.
 - ii) Any right which the Customer may have to reject non-conforming or defective Goods will only be effective if:
 - (1) the Customer notifies the Supplier in writing within 7 days following delivery and the Supplier is given the opportunity to inspect the Goods; and
 - (2) the Goods are returned unused, re-saleable and/or in the condition the Customer received them.
 - iii) The Supplier will not repair or replace, or refund the price of any Goods for so long as the Customer is in default in relation to any amount owing.
 - iv) The Supplier accepts no liability for any claim by the Customer or any other person, including without limitation any claim relating to or arising from:

18) Customer's Liability & Default

The Supplier (in addition to any other remedies hereby or by statute conferred) may treat the contract as terminated and any part of the Goods and/or Services price then unpaid, together with any other monies owing hereunder, whether or not due under the terms of the contract shall forthwith become due and payable. Any such termination shall be without prejudice to any claim or right the Supplier may otherwise possess.

- a) If the Customer shall:
 - i) fail to make any payment due under the contract or commit any other breach of any of the Customer's obligations under the contract; or
 - ii) suffer execution under any judgment; or
 - iii) commit an act of bankruptcy; or
 - iv) make any composition or arrangement with any creditor; or
 - v) being a company, pass a resolution for winding up or have a receiver appointed over any of its property or have a winding up petition presented against it,

19) Governing Law

- a) These terms of trade are principally governed by the laws of New Zealand, excepting that other jurisdictions may claim rights in the event of Criminal or Civil Law breaches in the Customer's usage of Services.
- b) The Supplier and the Customer shall submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of these terms and conditions of trade.