

1. SCOPE & APPLICATION

- 1.1. These terms apply to all purchases of products (including, without limitation, hardware and/or software) ("Products") or services ("Services") which are sold through this website ("Site") by: (a) Us, the seller, CADPRO Systems Ltd., Level 1, 527b Rosebank Road, Avondale, Auckland 1026, New Zealand (references to "us", "we" or "our" being construed accordingly) to (b) you, the purchaser (references to "you" or "your" being construed accordingly).
- 1.2. By placing an order on this site you agree to abide by these conditions. If you are a consumer (purchasing outside the scope of your business), then these Terms do not affect your statutory rights where these cannot be limited or excluded by applicable law.
- 1.3. These Terms shall include any and every invoice or other document evidencing or describing, whether by item or kind or otherwise, any products. These Terms are paramount, and, to the extent that there is any conflict between any provision of them and any invoice or other document evidencing or describing any products, these Terms will prevail.

2. OFFER, ACKNOWLEDGMENT AND ACCEPTANCE

- 2.1. Any prices, quotations and descriptions made or referred to on this Site are subject to availability, do not constitute an offer and may be withdrawn or revised at any time prior to our express acceptance of your order (as described below).
- 2.2. While we make every effort to ensure that items appearing on the Site are available, we cannot guarantee that all items are in stock or immediately available when you submit your order. We may reject your order (without liability) if we are unable to process or fulfil it. If this is the case, we will refund any prior payment that you have made for that item.
- 2.3. An order submitted by you constitutes an offer by you to us to purchase Products or Services on these Terms and is subject to our subsequent acceptance.
- 2.4. Prior to such acceptance, an automatic e-mail acknowledgement of your order may be generated. Please note that any such automatic acknowledgement does not constitute a formal acceptance of your order.
- 2.5. Our acceptance of your order takes effect and the contract concluded at the point where such offer is expressly accepted by us dispatching your order/commencing Services and accepting your credit card or other payment ("Acceptance").
- 2.6. We may keep records of orders received, acknowledgements, acceptances and other contract records for a reasonable period after Acceptance. We may be able to provide you with copies on written request; however you must make sure you print a copy of all such documents and these Terms for your own records.

3. YOUR REPRESENTATIONS

- 3.1. You represent that information provided by you when placing your order is up-to-date materially accurate and is sufficient for us to fulfil your order. You also represent that you have legal capacity to enter into a contract.
- 3.2. You are responsible for maintaining and promptly updating your account information with us for accuracy and completeness and keeping such information (and any passwords given to you for the purposes of accessing the Site and/or purchasing Products) secure against unauthorised access.
- 3.3. Unless agreed otherwise or required by applicable law, any warranties provided in relation to Products or Services only extend to you on the understanding that you are a consumer within the meaning of the Consumer Guarantees Act 1993, and not a purchaser for business purposes or a reseller of those Products or Services.
- 3.4. No warranty, commitment or any other obligation should ever be assumed by you on our behalf or on behalf of a Product manufacturer, licensor or supplier without our express prior written consent.

4. PRICE AND TERMS OF PAYMENT (NOTE: WE CANNOT CONFIRM PRICES PRIOR TO ACCEPTANCE OF YOUR ORDER)

- 4.1. Prices payable for Products or Services are those in effect at the time of dispatch or delivery, unless otherwise expressly agreed. From time to time it is possible that a programming or data transcription error may result in a price that is inaccurate. We will generally honour the posted price, although we reserve the right to correct the price and offer to sell you the Products or Services at the correct market price in situations where the price advertised is clearly an error as evidenced by being substantially under market.
- 4.2. Prices (unless stated otherwise) are in the currency quoted on the Site and remain valid for 30 days.
- 4.3. We have the right at any time prior to our Acceptance to withdraw any discount and/or to revise prices to take into account increases in costs including (without limitation) costs of any materials, carriage, labour or the increase or imposition of any tax, duty or other levy and any variation in exchange rates. We also reserve the right to notify you of any mistakes in Product descriptions or errors in pricing prior to product dispatch. In such event if you choose to continue with fulfilment of the order, you acknowledge that the Product or Service will be provided in accordance with such revised description or corrected price.
- 4.4. The places that we deliver to are listed on the Site ("Territory"). Unless otherwise specified, prices quoted are
 - 4.4.1. exclusive of the costs of shipping or carriage to the agreed place of delivery within the Territory (charges for which are stated on the Site); and
 - 4.4.2. exclusive of GST and any other tax or duty which (where applicable) must be added to the price payable;

You agree to pay for shipping or carriage of Products as such costs are specified by us at the point of purchase.

- 4.5. Payment shall be made prior to delivery and by such methods as are indicated on the Site (and not by any other means unless we have given our prior agreement).
- 4.6. Except as expressly provided elsewhere in these Terms or the Site, payment may be taken in full notwithstanding any claim for short delivery or defects.
- 4.7. We will charge credit or debit cards on dispatch of the Product or commencement of Services. We reserve the right to verify credit or debit card payments prior to Acceptance.
- 4.8. Where the payment is invoiced, each invoice shall be due on and made in full within thirty (30) days of the date of relevant invoice. If at any time you fail to pay any amount due on the relevant due date, we may by notice declare all invoiced amounts unpaid at that date to be immediately due and payable.

- 4.9. No counterclaim or set-off may be deducted from any payment due without our written consent. We may also take action against you for the price of Products at any time after payment has become due even though property in those Products may not yet have passed to you.
- 4.10. Any extension of credit allowed to you may be changed or withdrawn at any time. Interest shall be chargeable on overdue amounts accruing on a daily basis at the maximum amount permitted under applicable law from the due date of payment until our receipt of the full amount (whether before or after judgement). You shall indemnify us on demand against any out of pocket expenses incurred in relation to recovery of any overdue amounts.

5. TERMINATION

- 5.1. If you commit an act of bankruptcy or enter into a deed of arrangement with creditors or a court order for winding-up is made against you or you take or suffer any similar action in consequence of debt or we have cause to believe that you are unable to pay your debts as they fall due; or you fail to pay any amount by the due date or breach any of these Terms then, without prejudice to any of our other rights, we may:-
 - 5.1.1. stop any Products in transit; and/or
 - 5.1.2. suspend further Product deliveries; and/or
 - 5.1.3. stop or suspend provision of Services; and/or
 - 5.1.4. by written notice to terminate your order and all or any other contracts between us and you.

6. DELIVERY AND RISK

- 6.1. Delivery timescales/dates specified on the Site, in any order acknowledgement, acceptance or elsewhere are estimates only. While we endeavour to meet such timescales or dates, we do not undertake to dispatch Products and/or commence Services by a particular date or dates and shall not be liable to you in respect of delays or failure to do so.
- 6.2. Delivery shall be to a valid address within the Territory submitted by you and subject to Acceptance ("Delivery Address"). You must check the Delivery Address on any acknowledgement or acceptance we provide and notify us without delay of errors or omissions. We reserve the right to charge you for any extra costs arising from changes you make to the Delivery Address after you submit an order.
- 6.3. If you refuse or fail to take delivery of Products provided in accordance with these Terms, any risk of loss or damage to the Products shall nonetheless pass and without prejudice to any other rights or remedies we have:-
 - 6.3.1. We shall be entitled to immediate payment in full for the Products or Services delivered and either to effect delivery by whatever means we consider appropriate or to store Products at your risk;
 - 6.3.2. You shall be liable to pay on demand all costs of Product storage and any additional costs incurred as a result of such refusal or failure to take delivery;
 - 6.3.3. We shall be entitled 30 days after the agreed date for delivery to dispose of Products in such manner as we determine and may set off any proceeds of sale against any sums due from you.
- 6.4. Except to the extent required as a result of any mandatory rights you have as a consumer under applicable law, you shall not be entitled to reject the Products in whole or in part by reason of short delivery and shall pay in full notwithstanding short delivery or non-delivery unless you notify us in writing of any claim within 7 days of the latest of the date of receipt of the relevant invoice or delivery whereupon you shall pay for the quantity actually delivered.
- 6.5. Where we deliver Products by instalments, each instalment constitutes a separate contract and any defect in any one or more instalments shall not entitle you to repudiate the contract as a whole nor to cancel any subsequent instalment.
- 6.6. Save as otherwise provided in these Terms, risk of loss of or damage to the Products passes to you on delivery or when placed in your possession or that of any carrier or transport provided by you, whichever shall occur first.

7. REJECTION, DAMAGE OR LOSS IN TRANSIT

- 7.1. You are responsible for checking Products upon delivery and verifying that they are in satisfactory condition, in accordance with their description and complete. You may return purchased Products in accordance with these Terms or any applicable Returns Policy referred to on the Site.
- 7.2. Except as set out above or under any applicable Returns Policy and subject to any rights you have under applicable law that cannot be excluded or limited by these Terms:
 - 7.2.1. we shall not be liable and you shall not be entitled to reject Products or Services, except for:
 - a) damage to or loss of Products or any part thereof in transit (where the Products are carried by our own transport or by a carrier on our behalf) where notified to us within 5 working days of receipt of the Products;
 - b) defects in Products (not being defects caused by any act, neglect or default on your part) notified in writing to us within 30 days of receipt of the Products.
 - c) defective performance of Services (not being defects caused by any act, neglect or default on your part) where notified in writing to us within 5 days of such defect becoming apparent.
 - 7.2.2. We shall not be liable for any damage or losses arising from defective installation of the Products; from the use of the Products in connection with other defective, unsuitable or defectively installed equipment; your negligence; improper use or use in any manner inconsistent with the manufacturers specifications or instructions.
 - 7.2.3. Where there is a shortage or failure to deliver, or any defect in or damage to a Product or Service, we may at our option:
 - a. (in the case of Product shortage or non-delivery) make good any such shortage or non-delivery and/or
 - b) in the case of failure to perform or defective performance of a Service, make good such failure or defective performance; and/or
 - c) in the case of damage or any defect(s) in the Product and in accordance with any applicable Returns Policy:
 - (i) Replace or repair the Product upon you returning the Product; or
 - (ii) Refund the price paid in respect of any Products found to be damaged or defective.

your premises during normal business hours. This Condition 10.9 shall continue in force notwithstanding termination of the contract howsoever caused.

8. SOFTWARE

- 8.1. Where any Product supplied is or includes software ("Software"), this Software is licensed by us or by the relevant licensor/owner subject to the relevant end-user license agreement or other licence terms included with Software ("License Terms") and/or the Product. In addition:
- 8.1.1. Such Software may not be copied, adapted, translated, made available, distributed, varied, modified, disassembled, decompiled, reverse engineered or combined with any other software, save to the extent that (i) this is permitted in the License Terms, or (ii) applicable law expressly mandates such a right which cannot legally be excluded by contract.
- 8.1.2. Save to the extent provided for in any applicable License Terms, your rights of return and/or to a refund under these Terms and any applicable Returns Policy do not apply in the event that you open the Software shrink-wrap and/or break the license seal and/or use the Software.
- 8.1.3. EXCEPT TO THE EXTENT EXPRESSLY PROVIDED BY US IN WRITING OR UNDER RELEVANT LICENSE TERMS, SOFTWARE IS PROVIDED AS IS WITHOUT ANY WARRANTIES, TERMS OR CONDITIONS AS TO QUALITY, FITNESS FOR PURPOSE, PERFORMANCE OR CORRESPONDENCE WITH DESCRIPTION AND WE DO NOT OFFER ANY WARRANTIES OR GUARANTEES IN RELATION TO SOFTWARE INSTALLATION, CONFIGURATION OR ERROR/DEFECT CORRECTION. YOU ARE ADVISED TO REFER TO ANY LICENSE TERMS WITH REGARDS TO DETERMINING YOUR RIGHTS AGAINST A MANUFACTURER, LICENSOR OR SUPPLIER OF THE SOFTWARE.

9. LIABILITY LIMITATION

- 9.1. TO THE MAXIMUM EXTENT LEGALLY PERMITTED, OUR AGGREGATE LIABILITY (WHETHER FOR NEGLIGENCE, BREACH OF CONTRACT, MISREPRESENTATION (EXCEPT, IF FRAUDULENT) OR OTHERWISE) SHALL IN NO CIRCUMSTANCES EXCEED THE COST OF THE DEFECTIVE, DAMAGED OR UNDELIVERED PRODUCTS OR SERVICES (DETERMINED BY NET PRICE INVOICED/CHARGED TO YOU) IN RESPECT OF ANY SINGLE OCCURRENCE OR SERIES OF OCCURRENCES. EVEN IF ADVISED OF THE SAME, WE SHALL NOT BE LIABLE FOR:
- 9.1.1. SPECIAL, PUNITIVE, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES; OR
- 9.1.2. YOUR INABILITY TO MAKE ORDERS OR LOSS OF INCOME, REVENUE, PROFITS, CONTRACTS, DATA, GOODWILL OR SAVINGS.
- 9.2. SUBJECT TO ANY EXPRESS PROVISIONS TO THE CONTRARY SET OUT IN THESE TERMS, TO THE MAXIMUM EXTENT LEGALLY PERMITTED ALL TERMS, CONDITIONS, WARRANTIES AND REPRESENTATIONS (EXPRESS OR IMPLIED BY STATUTE, COMMON LAW OR OTHERWISE) ARE HEREBY EXCLUDED. WE SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE OR INJURY WHETHER RESULTING FROM DEFECTIVE MATERIAL, FAULTY WORKMANSHIP, OR OTHERWISE HOWSOEVER ARISING AND WHETHER OR NOT CAUSED BY OUR (OR OUR EMPLOYEES OR AGENTS NEGLIGENCE) EXCEPT TO THE EXTENT THAT APPLICABLE LAW PROHIBITS EXCLUSIONS OR LIMITATIONS OF LIABILITY FOR INTENTIONAL TORTS OR GROSS NEGLIGENCE OR OTHER WRONGS.
- 9.3. WE DO NOT EXCLUDE LIABILITY FOR (1) DEATH OR PERSONAL INJURY CAUSED BY OUR NEGLIGENCE (OR THAT OF OUR EMPLOYEES OR AUTHORISED REPRESENTATIVES) OR (2) FRAUD. THE FOLLOWING ADDITIONAL TERMS APPLY TO CONSUMERS (PURCHASING PRODUCTS OTHER THAN FOR THE PURPOSES OF A BUSINESS):
- 9.4. NOTHING IN THESE TERMS SHALL OR BE CONSTRUED AS LIMITING OR EXCLUDING OUR LIABILITY OR A MANUFACTURERS, LICENSORS OR SUPPLIERS LIABILITY TO YOU, WHERE UNDER MANDATORY LAWS APPLICABLE IN YOUR TERRITORY, SUCH LIABILITY CANNOT BE EXCLUDED OR LIMITED BY CONTRACT.
- 9.5. THESE TERMS DO NOT AFFECT YOUR STATUTORY RIGHTS UNDER APPLICABLE CONSUMER LAWS. YOU MAY ASSERT SUCH RIGHTS AT YOUR DISCRETION.

10. SECURITY INTEREST

- 10.1. You grant a security interest to us in each and every part of the Products as security for payment of any amounts owing by you to us from time to time, and for the performance by you of all your other obligations to us from time to time.
- 10.2. You agree to do anything that we reasonably require to ensure that we have a perfected security interest in all the Products and a purchase money security interest in each part of the Products to the extent of the purchase price for that part.
- 10.3. We may allocate amounts received from you in any manner we determine, including in any manner required to preserve any purchase money security interest we have in any Products.
- 10.4. You waive your 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.
- 10.5. You agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to this Contract, or the security under this Contract, and waives the purchasers rights under sections 121, 125, 129, 131 and 132 of the PPSA.
- 10.6. For the purposes of Terms 10.1 to 10.5, the term "PPSA" means the Personal Property Securities Act 1999 and the terms "perfected", "purchase money security interest" and "security interest" have the respective meanings given to them under, or in the context of, the PPSA.
- 10.7. Until payment has been made in full for any Products, you shall store the Products in such a way as to enable them to be readily identified as our property, and keep proper and accurate records to enable us to distinguish Products for which payment has been made in full from those Products for which payment is outstanding.
- 10.8. If you sell any Products, to the fullest extent permitted by law, you shall hold (on a fiduciary basis) all proceeds of such sales in trust for us and in a separate account. You undertake immediately upon being so requested by us to assign to us all rights in respect of those proceeds and that separate account and/or all rights and claims which you may have against any customers arising from such sales until payment is made in full as aforesaid and not to assign such rights and claims to any third party without our prior written consent.
- 10.9. We reserve the right (subject to applicable law) to repossess any Products in respect of which payment is overdue, declined or lapses and thereafter to re-sell the same and for this purpose, you hereby grant us an irrevocable right and licence to our servants and agents to enter upon

11. THIRD PARTY RIGHTS

- 11.1. You shall indemnify us against any and all liabilities, claims and costs incurred by or made against us as a direct or indirect result of us performing Services or carrying out any work on or to the Products where this has been done to you (or your representatives) specific requirements or specifications causing an infringement or alleged infringement of any proprietary rights of any third party.
- 11.2. To the fullest extent permitted by law and save where expressly set out in any License Terms or elsewhere, we shall have no liability to you in the event of the Products or Services infringing or being alleged to infringe the proprietary rights of any third party. In the event that the Products are or may be the subject of patent, copyright, database right, registered design, trade mark or other rights of any third party, you should refer to the relevant terms of the Product manufacturer and/or licensor/owner. We shall be obliged to transfer to you only such right or title as we have.

12. WARRANTY

- 12.1. All Product specifications, illustrations, drawings, particulars, dimensions, performance data and other information on the Site or made available by us are intended to represent no more than a general illustration of the Products and do not constitute a warranty or representation by us that the Products will conform with the same. You must refer to the manufacturers specifications or warranty documentation to determine your rights and remedies in this regard.
- 12.2. You will have the benefit of the manufacturers, licensors or suppliers warranty with the Products supplied and should refer to the relevant documentation supplied with the Product in this regard. (If applicable, a Returns Policy may also set out procedures applicable to repairs or replacement of defective Products delivered.)
- 12.3. Your rights of repair or replacement of any Products or any part or parts thereof which are found to be defective will (except where agreed otherwise) be negated or rendered void where:
- 12.3.1. Products have been repaired or altered by persons other than the manufacturer, us or any authorised dealer; and/or
- 12.3.2. defective Product or Products have not been returned together with full details in writing of the alleged defects within 30 days from the date on which such Products were delivered; and/or
- 12.3.3. defects are due (wholly or partially) to mistreatment, improper use or storage or maintenance or installation, or failure to observe any manufacturer's instructions or other directions issued or made available by us in connection with the delivered Products.
- 12.4. To the maximum extent legally permitted, we exclude all other warranties, guarantees and other assurances implied by custom or law on our behalf.

13. CONSENTS, CUSTOMS DUTIES & EXPORT

- 13.1. If any licence or consent of any government or other authority is required for the acquisition, carriage or use of the Products by you, you shall obtain such licence or consent at your own expense and if necessary produce evidence to us on demand. Failure so to do shall not entitle you to withhold or delay payment of the price. Any additional expenses or charges incurred by us resulting from such failure shall be met by you.
- 13.2. Products licensed or sold to you under these Terms may be subject to export control laws and regulations in the Territory or other relevant jurisdiction where you take delivery or use them. You shall be responsible for complying with those laws and will not do anything to breach them.
- 13.3. Items entering New Zealand from outside may be subject to customs charges, import duties and/or taxes (including GST). You may be subject to customs charges, import duties and taxes (including GST), levied when the Product reaches New Zealand. Any such additional charges for customs clearance or import duties or taxes (including GST) must be met by you, since we have no control over what these charges are. You should contact the New Zealand Customs Service or Inland Revenue Department for further information on customs policies or duties.

14. NOTICES

- 14.1. Any notice or other communications in relation to our contract may be given by sending the same by hand delivery, pre-paid post, fax or e-mail to the latest address and contact that one party has notified in writing to the other. This will also be the address for service of legal proceedings in the manner prescribed by law. Such notices or communications (where properly addressed) shall be considered received:
- 14.1.1. In relation to hand delivery, on the date of delivery at the relevant address (or, if this is not a working date, the first working date thereafter);
- 14.1.2. If posted, 5 working days after the date of posting;
- 14.1.3. If by fax, on the date of the transmission as evidenced by a successful transmission contact report (or, if this is not a working date, the first working date thereafter).
- 14.1.4. If sent by email, on the earliest of (i) the email being acknowledged by the recipient as received; (ii) receipt by the sender of an automated message indicating successful delivery or the email having been opened; or (iii) the expiry of 48 hours after transmission, provided that the sender has not received notification of unsuccessful transmission.

15. PERSONAL INFORMATION AND YOUR PRIVACY

- 15.1. We will observe applicable data protection laws and will not use information that does or can be used to personally identify you ("Personal Data") you other than as set out in our Privacy Statement at [Privacy Statement](#) ("Privacy Statement"). By submitting your Personal Data in relation to your order, you consent to such Personal Data being processed to fulfil your order and in accordance with such Privacy Statement.
- 15.2. In relation to security of orders that you place with us:
- 15.2.1. Our secure-server software encrypts all your Personal Data including credit or debit card number and name and address. This means that the characters that you enter are converted into pieces of code that are then securely transmitted over the Internet.
- 15.2.2. If your bank or card issuer holds you liable for the charges in relation to unauthorised use of your debit or credit card, we will cover your liability up to \$50.00 (New Zealand Dollars) provided that the unauthorised use of your credit or debit card was not caused by your own fraud or negligence (or someone acting with your authority). Our liability under this Condition is effective up to a maximum of \$50.00 (New Zealand Dollars) on credit or debit card purchases made using our secure server. In the event of any unauthorised use of your credit or debit card, you must still always notify your card provider in accordance with its reporting rules and procedures.

16. GENERAL

- 16.1. You shall not assign, transfer, charge or make over or purport to assign transfer charge or make over your rights under these Terms.
- 16.2. We shall not be liable to you nor held in breach of contract for any loss or damage which may be suffered as a direct or indirect result of us being prevented, hindered or delayed in the performance by reason of any circumstances beyond our reasonable control including (but not limited to) any act of God, war, riot, civil commotion, government action, explosion, fire, flood, storm, accident, strike, lock-out, trade dispute or labour disturbance, breakdown of plant or machinery, interruption in the supply of power or materials and in such event we may elect to cancel your order and refund any payments made.
- 16.3. You acknowledge that these Terms supersede and cancel all previous contracts, agreements and working arrangements whether oral or written, express or implied, between us. These Terms prevail over any other terms or conditions contained in or referred to elsewhere or implied by trade, custom or course of dealing. Any purported terms or conditions to the contrary are hereby excluded to the fullest extent legally permitted. To the fullest extent permitted under applicable law, we reserve the right to modify these Terms without notice.
- 16.4. No relaxation, forbearance, delay or indulgence by either you or us in enforcing any of these Terms or the granting of time by either party to the other shall prejudice or restrict such rights and powers.
- 16.5. No waiver of any term or condition of these Terms shall be effective unless made in writing and signed by us. The waiver of any breach of any Term shall not be construed as a waiver of any subsequent breach or condition.
- 16.6. If for any reason we determine or a court of competent jurisdiction finds that any provision or portion of these Terms to be illegal, unenforceable, or invalid under applicable law in a particular jurisdiction:
- 16.6.1. these Terms will not be affected in other jurisdictions to the extent that such determination or finding has no application; and
- 16.6.2. in the relevant jurisdiction, the remainder of these Terms (to the fullest extent permitted by law) will continue in full force and effect.

17. GOVERNING LAW AND JURISDICTION

- 17.1. The construction validity and performance of these Terms shall be governed by New Zealand Law and the parties submit to the exclusive jurisdiction of the Courts in New Zealand in the event of legal proceedings arising from any dispute.
- 17.2. The language of any dispute resolution procedure or any proceedings will be English.