

**ELITE BUSINESS SYSTEMS LP**

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## Elite Business Systems LP

# GENERAL TERMS AND CONDITIONS

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## GENERAL

### 1. APPLICATIONS OF THESE CONDITIONS

Unless otherwise agreed by Elite in writing, these Conditions are deemed incorporated in and are applicable to (and to the extent of any inconsistency will prevail over) the terms of every Quote, Order, Plan, Contract, or other arrangement in connection with the supply of Goods and/or Services by Elite to You.

### 2. ASSIGNMENT

- 2.1 You may not assign Your rights and obligations without the prior written consent of Elite.

### 3. VARIATION OF THESE TERMS AND CONDITIONS

- 3.1 Elite may at any time vary these Terms and Conditions by publishing the varied Terms and Conditions on Elite's website. You accept that by doing this, Elite have provided You with sufficient notice of the variation.

## GOODS AND SERVICES

### 4. QUOTES

- 4.1 Quotes will only be valid for 7 days unless otherwise specified in the Quote.
- 4.2 Elite reserves the right to alter product and prices in the quote, as long as the quote has not been confirmed with You.
- 4.3 Having confirmed a quote, if You later require any changes to the quote, and Elite agree to the changes, these changes will be charged at Elite's prevailing rate.
- 4.4 Once the Quote has been confirmed and converted to an Order, the Order will be subject to Elite's normal Terms and Condition of Sale.
- 4.5 The general minimum turnaround time for a Quote request to be actioned is usually 24 hours. In the event that a quote is required urgently please let Elite know so that Elite can respond to it accordingly.
- 4.6 When a special price or discount offer has been applied to a Quote, no other special promotion, discount or bonus offer will be applicable.
- 4.7 In the event that products in a Quote are subjected to any price and supply fluctuations that is outside of Elite's control Elite reserve the right after consultation with you to update the price and product in the Quote accordingly. If a product has undergone a price drop or a price increase, the Quote will then be adjusted accordingly. If there is a product that is no longer available, the product will then be replaced or substituted based on Your request and is subject to Your final approval.
- 4.8 Price on non-stocked products is subject to price and stock fluctuations and can only be confirmed once the Quote is turned into an Order. While Elite endeavours to

honour every price quoted, if there is a price increase that is beyond Elite's control, Elite reserves the right to increase the price as necessary.

- 4.9 ETA information is based on an estimate given by Elite's vendors and cannot be held as the actual promised date as delivery is outside of Elite's control.
- 4.10 Freight charges will be added to the Order unless otherwise stated. Any included delivery charges are estimates only.
- 4.11 Elite does not keep inventory and as such only order items once Elite receive a completed Order from a client. If You would like to return an item or cancel an order, a restocking fee may apply. Elite will need to get approval from the distributor that the stock is returnable before being able to issue a credit as not all products can be returned.
- 4.12 Unless specified, all items on quotes are covered by manufacturer's warranty covering parts and labour for hardware only on a return to depot basis.
- 4.13 Elite may vary or withdraw a Quote at any time. Elite may do so for any reason Elite consider fit, including, e.g. the Goods or Services become unavailable or the cost price of Goods or Services increases materially after the date of the Quote.

## **5. ORDERS**

- 5.1 Apart from actual knowledge to the contrary, Elite may rely upon the apparent validity of an Order. If any Order is signed or sent by email or approved through the web-based ordering system by a named person, that person warrants that the Order is, and it is acknowledged the Order is deemed in favour of Elite to be:
  - 5.1.1 signed by, and duly authorised by, both the person who signed the Order and the person who sent the email; and
  - 5.1.2 duly authorised by the person on whose behalf the Order is placed or apparently placed.
- 5.2 For the purposes of ascertaining the credit standing or history of a prospective client to whom Elite are considering extending credit or payment terms, You hereby consent to Elite undertaking a credit reference check in respect to Your organisation.
- 5.3 You acknowledge that Elite cannot cancel an Order once the manufacturer or supplier has dispatched the relevant Goods and that such dispatch often occurs the same day as the Order is placed by Elite. Consequently, Orders can only be cancelled with Elite's prior approval.

## **6. PRICING AND RATES**

- 6.1 All rates and amounts charged or quoted for Goods and/or Services by Elite are exclusive of GST and any other applicable taxes or government charges (unless otherwise stated in writing by Elite).
- 6.2 Elite reserves the right to vary any Rate and/or the Rate Schedule from time to time (subject to any fixed pricing for specific periods in any Plan), in Elite's absolute discretion.

- 6.3 You acknowledge that call-out fees may be charged in addition to the Rates at Elite's absolute discretion for any work carried out after business hours.
- 6.4 Where Elite arrange a return or refund on behalf of You, or where an Order is cancelled by You after acceptance by Elite, Elite may charge You a Return/Cancellation fee to cover the administration costs incurred by Elite in processing the return or refund.
- 6.5 Where there is any increase in the underlying costs incurred by Elite in connection with the supply of Goods or Services to You, Elite may vary any of Elite's Rates.

## **7. SERVICES AND PLANS**

- 7.1 Service and Plan Variations: Currently, Elite offers the Services and Plans referred to in the Rates Schedule and any Plan Schedule. Elite may withdraw the provision of, or vary the scope or terms of, or add to or change, the Services, from time to time in Elite's absolute discretion.
- 7.2 Elite will provide You with a copy of the current Rates Schedule upon request. Plan Schedules are tailored for particular Plans and are available to Clients participating in the Plan.

## **8. CONTRACTING**

- 8.1 Elite may subcontract any or all of the Services to be performed but shall retain prime responsibility for the Services under these Terms.

## **9. DELIVERY, TITLE AND RISK**

- 9.1 Elite will use all reasonable endeavours to dispatch Goods by the due date, but does not accept any liability for non-delivery or failure to deliver on time where this is caused by circumstances beyond the reasonable control of Elite, including, for example, due to failures in supply to Elite or delays caused by third parties, such as delivery companies or manufacturers.
- 9.2 Delivery is deemed to take place when the Goods are delivered to Your nominated address, whereupon risks of loss, breakage and all damage and all other risks pass to You. Nothing in this clause 9.2 will affect title to the Goods.
- 9.3 You will ensure that Goods are adequately insured from the time of delivery under clause 9.2.
- 9.4 Personal Property Security Register. You authorise Elite to retain title to the goods by registering a PPSR over the goods until such time as the goods are paid for in full. You agree that failure to receive notice of any PPSR registered will not invalidate the PPSR.

## **10. RETURNS AND CLAIMS FOR GOODS AND SERVICES**

- 10.1 You acknowledge that Elite supply Goods subject to returns and claims policies, of any relevant manufacturer or supplier.
- 10.2 Where Goods have some element of customisation for You, or are supplied pursuant to an Order for Goods that is in the opinion of Elite special or unusual, You may not return the Goods to Elite or cancel the related services.

- 10.3 Please inspect all Goods immediately upon their delivery and give written notice immediately to Elite of any matter by reason of which You might wish to return the Goods, ask for a refund, or make a claim.
- 10.4 Where You are entitled to return Goods under these Conditions, You must return the Goods in their original condition.

## **11. FORCE MAJEURE**

- 11.1 Neither party shall be under any liability for failures or delays attributable to causes beyond its control.

## **12. PRODUCT SPECIFICATIONS**

- 12.1 Elite make every effort to supply the Goods in accordance with the Order however Elite may supply alternate Goods subject to minor variations in actual dimensions and specifications where these are changed by the manufacturer of the Goods after the Order date and before delivery.
- 12.2 If Elite cannot supply the Goods ordered by You, Elite may supply alternate Goods of equal or superior quality provided however that You will not pay a higher price than the price Quoted or otherwise agreed for the Goods ordered.

## **13. LIABILITY**

- 13.1 You indemnify and hold Elite harmless in respect of any allegation, claim, loss or expense of Yours or any third-party for any program or data loss or damage suffered by You or that third-party arising directly or indirectly from the supply of the Goods or Services by Elite to You. Unless otherwise agreed in writing with Elite, You acknowledge You are solely responsible for backing up Your programs and data in order to mitigate Your own potential loss of programs and data unless Elite have specifically contracted in writing to carry out this work for you.
- 13.2 You indemnify and hold Elite harmless in respect of any allegation or claim as to any indirect or consequential losses or expenses suffered by You or any third-party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to You or any third-party.
- 13.3 You indemnify and hold Elite harmless for any allegation or claim for loss or damage by You or a third-party where Elite have failed to meet any delivery date or cancels or suspends the supply of Goods or Services.
- 13.4 Except as otherwise expressly stated in these Terms and Conditions, Elite is not liable for any loss or damage of any kind however caused (including, but not limited to, the negligence of Elite) which is suffered or incurred by You in connection with:
  - 13.4.1 Goods or Services provided to You or any Work carried out by Elite.
  - 13.4.2 Your use of Elite's website or any linked website;
  - 13.4.3 the non-availability of Goods or Elite's Services for any reason;
  - 13.4.4 any act or omission of Elite or the provision of inaccurate, incomplete or incorrect information by You

- 13.5 To the extent that any legislation implies a condition or warranty that cannot be excluded but can be limited, clause 13.4 does not apply to that liability and Elite's liability for any breach of that condition or warranty is limited to Elite's doing any one or more of the following (at its election):
- 13.5.1 replacing the Goods or supplying equivalent Goods, Services or Work;
  - 13.5.2 repairing the Goods or the Work;
  - 13.5.3 paying the cost of replacing the Goods or the Work or acquiring equivalent Goods, Services or Work; or
  - 13.5.4 paying the cost of having the Goods or the Work repaired.

## **14. ERRORS AND OMISSIONS**

- 14.1 Elite makes every effort to ensure that all prices and descriptions quoted are correct and accurate. In the case of an error or omission, Elite may rescind the affected contract by written notice to You, notwithstanding that Elite has already accepted Your Order and/or received payment from You. Elite's liability in that event will be limited to the return of any money You have paid in respect of the Order.

## **15. DISPUTES**

- 15.1 In the event of a dispute the two parties will choose an independent arbiter acceptable to both. If an arbiter cannot be agreed upon, then an arbiter is to be chosen jointly by the two parties' solicitors. In either case the parties agree to accept the decision of the arbiter as binding.

# **ELITE'S RESPONSIBILITIES**

## **16. PRIVACY STATEMENT AND YOUR RIGHTS**

- 16.1 Elite is collecting Your personal information for the fulfilment of Quotes, Orders and the provision of Goods or Services to you and Elite may retain and use it for these purposes.
- 16.2 Elite may disclose Your personal information to other persons for the purposes of the fulfilment of Quotes, Orders and Work for you or in order to provide Goods or Services to You, to verify the information You provide, for enquiries about Goods or Services that may be suitable for your purposes, or to confirm Your requirements, to anyone proposing to supply Goods or Services to You, or to acquire Goods or Services on Your behalf, or in respect of enquiries relating to any of the foregoing.
- 16.3 Otherwise Elite will not disclose Your personal information without Your consent unless required by law.

## **17. INSURANCE COVERAGE**

- 17.1 Elite will maintain public liability insurance for personal injury and property damage for a general aggregate of \$5,000,000. At Your request Elite will provide You with certificates, including renewal certificates evidencing such coverage.

## YOUR RESPONSIBILITIES

### 18. LODGING OF SERVICE REQUESTS

#### 18.1 Service Request Lodgement Process

When you contact Elite to lodge a service request, please use the methods below:

**Phone:** 09 358 5480 (Auckland) / 07 847 0777 (Hamilton) / 07 570 0000 (Tauranga)

**Email:** [service@elite.co.nz](mailto:service@elite.co.nz)

**Web Portal:** <https://portal.elite.nz>

Include a short description of the problem and any screenshots of errors to assist in the resolution of the issue. If the issue is being lodged by either phone or external email please include your name, company and return contact details.

Service requests should not be lodged directly with engineers, as this detracts them from resolving the current issue.

#### 18.2 Service Requests Outside of Elite's Business Hours

Service Requests that must be addressed outside of business hours must be lodged by phone (charges apply for after-hours work). If not, the Service Request will be viewed on Elite's next Business Day.

### 19. ACCESS TO SYSTEMS, SITES AND PEOPLE

19.1 In order to provide You with the agreed Service, You agree to give Elite access to various items of Yours including but not limited to, equipment, people and sites as and when required.

19.2 You agree to allow Elite to install software on Your Equipment that allows Elite's engineers to access Your systems at any time. This software allows Elite to view system status, send monitoring information, see users' desktops and control Your PC's. This may require that devices are left on overnight or weekends.

### 20. THIRD-PARTY AUTHORISATIONS

20.1 At times Elite may need to contact Your third-party providers on Your behalf, such as Your internet provider. Some of these providers may require Your authorisation for Elite to deal on Your behalf. Please ensure that Elite can deal freely with these providers.

### 21. PAYMENT, LATE PAYMENT AND DEFAULT

21.1 All invoices issued to You are due and payable to Elite within the terms stated on the invoice (unless otherwise agreed in writing). by credit card, direct deposit or direct debit in accordance with these Terms and Conditions and in the way set out in the Invoice.

21.2 Where You fail to pay an invoice within thirty (30) days of the due date, Elite may, in Elite's absolute discretion and without prior notice, suspend or discontinue the supply of Goods and/or Services to You.



- 21.3 All legal and other costs and expenses incurred in connection with the recovery of late payments will be added to the amount due by You to Elite and will be recoverable from You, in addition to the original invoice cost. If You default in payment of any invoice on time, moneys which would have become due by You at a later date shall be immediately due and payable without any further notice to You. Collectively, all of these moneys are referred to in these Conditions as a "Sum Due".
- 21.4 If payment of any Sum Due is not made on time, Elite reserves the right to charge interest daily on the Sum Due at the current credit card lending rate, calculated and charged daily on and from the due date until the Sum Due is paid in full.
- 21.5 All payments of the Sum Due made by You to Elite will be applied as follows:
- 21.5.1 first in or towards payment of any costs (including legal costs), charges, expenses or outgoings paid by Elite in relation to any collection costs for the recovery of any amounts owing by You to Elite;
  - 21.5.2 secondly, in or towards payment of any interest due or payable hereunder, and
  - 21.5.3 thirdly, in or towards payment of Your debts to Elite in order from the longest standing due to the most recently incurred.

## **22. NON-SOLICITATION OF CLIENTS AND EMPLOYEES**

- 22.1 Policy and professional ethics require that Elite's employees not seek employment with, or be offered employment by You during the course of employment and for a period of six months thereafter.
- 22.2 You agree that Elite's damages resulting from breach of this clause 22.1 would be impracticable and that it would be extremely difficult for Elite to ascertain the actual amount of damages. Therefore in the event You violate this provision, You agree to immediately pay Elite 65% of the employee's total annual salary, as liquidated damages and Elite shall have the option to terminate any Agreements without further notice or liability to You. The amount of liquidated damages reflected herein is not a penalty and is reasonably calculated based upon the projected costs Elite would incur to identify, recruit, hire and train suitable replacements for such personnel.

## **23. SOFTWARE**

- 23.1 All Software licences are Your responsibility and not that of Elite. It is Your duty to store all licences for all Software used, so that that they can be reproduced if and when required. This includes all Software installed by Elite.
- 23.2 You indemnify and hold Elite harmless against any claim, allegation, loss, damage or expense arising directly or indirectly from:
- 23.2.1 any unauthorised Software use by You;
  - 23.2.2 any breach of any Software licence in respect of Software provided to Elite by You to be installed on one of Your computers;
  - 23.2.3 otherwise as a result of Elite installing Software at Your request where You are not authorised to use the Software; and

- 23.2.4 any problem, defect or malfunction associated with any Software (or related services) supplied by third parties.
- 23.3 All copyright in custom software remains the sole property of Elite unless alternate arrangements are made as part of a separate software agreement.

## **24. COPYRIGHT AND CONFIDENTIALITY**

- 24.1 You warrant that any confidential or copyright information or intellectual property (of any kind and in any form held) or provided by You to Elite belongs to You. In the event of any breach of this warranty, You will indemnify and hold Elite harmless as if such warranty had not been breached (and regardless of any non-performance of any obligation by Elite on account of or in connection with the breach of such warranty).
- 24.2 All copyright and other intellectual property rights in any Work created, commissioned or acquired by Elite in the course of the supply of Services by Elite to You will be the exclusive property of Elite unless otherwise agreed in writing by Elite and You.
- 24.3 Elite acknowledges that in the course of providing Services to You, Elite may learn from You certain confidential information relating to You, including Your customers, consumers or employees. Elite shall regard any and all information Elite receive which in any way relates or pertains to You, including Your customers, consumers or employees as confidential.
- 24.4 You also acknowledge that all information and services, consulting techniques, proposals, and documents disclosed by Elite which come to Your attention during the course of business constitute valuable assets of, and confidential and/or proprietary information of Elite.

As such, both parties shall take all commercially reasonable steps to not disclose, reveal, copy, sell, transfer, assign, or distribute any part or parts of such information in any form, to any person or entity, or permit any of its employees, agents, or representatives to do so for any purpose except unless permitted in writing by the disclosing party or as required by law.