

## TERMS AND CONDITIONS OF SALE

### 1. Definitions and Interpretation

- (a) **"Consumer Law"** means the Consumer Guarantees Act 1993.
- (b) **"Agreement"** means an agreement between the Company and a Purchaser as defined in clause 2 to these Terms.
- (c) **"Company"** means ifm electronic ltd (NZBN 9429048697873), Unit 13, 930 Great South Road, Penrose, Auckland, New Zealand.
- (d) **"Consequential Loss"** means any indirect or consequential loss including, but not limited to, loss of production, loss of revenue, loss of profit, loss of business reputation, loss of opportunities, loss of anticipated savings and/or loss arising from business interruption.
- (e) **"FAQs"** mean the FAQs (or frequency asked questions) published and located at the my ifm website from time to time.
- (f) **"Goods"** means (a) any item detailed in a Quotation or Order, (b) any goods, equipment, inventory, accessories, parts or tools published at the Website (including at my ifm), and/or (c) any goods otherwise supplied by the Company to the Purchaser pursuant to an Agreement.
- (g) **"GST"** has the same meaning as under the GST Law and means the Goods and Services Tax imposed under the GST Law.
- (h) **"GST Law"** means the Goods and Services Tax Act 1985.
- (i) **"Intellectual Property Rights"** means any intellectual or industrial property, including without limitation, any patent, trade mark or service mark, copyright, registered design, trade secret or confidential information or any licence or other right to use or to grant the use of any of the foregoing or to be the registered proprietor or user of any of the foregoing (whether registered or unregistered).
- (j) **"Loss"** means damage, loss, cost, expense, injury or liability, including Consequential Loss, incurred by a person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent, under any legal ground whatsoever.
- (k) **"my ifm"** means an online shopping website at the Website or in which a User or Purchaser may acquire Goods and/or Services from the Company via the internet.
- (l) **"Order"** means any order placed by a Purchaser with the Company for Goods and/or Services, including an order placed online via my ifm, whether in response to a Quotation provided or otherwise.
- (m) **"Personal Information"** has the same meaning as in the Privacy Act.
- (n) **"PPSA"** means the Personal Property Securities Act 1999.
- (o) **"Privacy Act"** means the Privacy Act 1993.
- (p) **"Privacy Policy"** means the privacy policy of the Company as amended from time to time as published at the Website.
- (q) **"Purchaser"** means any person that acquires Goods and/or Services from the Company pursuant to an Agreement (including via my ifm), and includes a person to whom any Quotation has been provided.
- (r) **"Purchaser's Personal Information"** means:
- (i) if the Purchaser is an individual, the Personal Information relating to that individual; or
  - (ii) if the Purchaser is a body corporate, the Personal Information relating to directors, officers and relevant individuals employed by or connected to the Purchaser.
- (s) **"Quotation"** means a quotation, proposal, estimate (or similar), whether in writing or verbal, issued by the Company for the sale of Goods and/or the supply of Services.
- (t) **"Services"** means (a) any services detailed in a Quotation or Order, (b), any services published at the Website (including at my ifm), and/or (c) any services otherwise supplied by the Company to a Purchaser pursuant to an Agreement.
- (u) **"Terms"** means these Terms and Conditions of Sale.
- (v) **"User"** means a user of my ifm.

(w) "**Website**" means [www.ifm.com/nz](http://www.ifm.com/nz).

(x) In the interpretation of these Terms, unless the contrary intention appears:

(i) headings are for convenience only and do not affect the interpretation of the Agreement;

(ii) the words 'includes' or 'including' will not limit whatever follows;

(iii) a reference to a person includes a reference to a corporation, firm, association or other entity, and vice versa; the singular includes the plural and vice versa; a reference to any gender includes a reference to all other genders;

(iv) a reference to any legislation includes a reference to any modification or re-enactment;

(v) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning; and

(vi) a reference to the Company or the Purchaser includes any person acting for or on behalf of the Company or the Purchaser, including its directors, officers, agents, employees or contractors.

## **2. Terms of Agreement**

(a) These Terms, together with (a) any Quotation the subject of an accepted Order, and (b) an accepted Order, constitute the entire contract between the Company and a Purchaser ('Agreement'). To the extent of an inconsistency between these Terms and an accepted Order, these Terms shall prevail.

(b) Subject to the Company's rights provided for in clause 18(b) to these Terms, no communication (written or verbal) between the Company and a Purchaser shall modify or vary these Terms unless such modification or variation is in writing and signed by the Company.

(c) Provision of a Quotation by the Company shall not constitute an offer and an Order from a Purchaser shall constitute an offer only by the Purchaser to the Company.

(d) An Agreement shall only legally bind the Company after it accepts an Order and communicates that acceptance to a Purchaser.

(e) Where a Purchaser to an Agreement constitutes more than one person, each such person shall be jointly and severally liable for all Purchaser related obligations under that Agreement.

## **3. Orders**

(a) Each Order placed by a Purchaser with the Company will be considered valid when placed verbally or in writing.

(b) Any person who, on behalf of a Purchaser, places an Order warrants that he or she is duly authorised by the Purchaser to do so.

(c) By placing an Order a Purchaser is deemed to have read and understood these Terms.

(d) The Company may in its sole discretion refuse to accept any Order for any reason whatsoever.

(e) A Purchaser acknowledges that once an Order has been accepted by the Company, the Company is under no obligation to accept a cancellation of, or variation to, that Order. If the Company does accept a variation to an Order (a) such variation of that Order will only be binding on the Company if evidenced in writing by the Company, and (b) the Purchaser acknowledges and agrees that the Company may vary the price and anticipated delivery time(s) associated with the supply of Goods and/or Services the subject of that Order, as a consequence of that variation.

(f) Without limiting this clause 3, any agreement to cancel or vary an Order shall be subject to the Company being compensated by the Purchaser for any and all Loss incurred or suffered by the Company with respect to the Order prior to the date of cancellation or variation.

(g) Each Order placed by a Purchaser shall be a representation to the Company that the Purchaser is solvent and able to pay the Company's accounts as and when they are due.

## **4. Quotations & Prices**

(a) Unless otherwise agreed to in writing by the Company, a Quotation will remain valid for a period of thirty (30) days from the date on which it was communicated.

(b) A Quotation is indicative and approximate only and the Company is not bound by that Quotation.

(c) The prices for the supply of Goods and/or Services the subject of an accepted Order shall be the higher of (a) the prices detailed in the Quotation the subject of the accepted Order, and (b) the prevailing price charged by the Company as at the date of delivery of the Goods and/or Services the subject of the accepted Order, together with the amount which the Company is required to pay on account of (as applicable) freight, transportation, exchange, insurance premiums and any customs duties, excise, taxes or charges which may be levied by any governmental authority (domestic or foreign). Unless otherwise agreed in writing, in the event of any increase in the price or cost of the Goods and/or Services relevant to third party suppliers to the company associated with those Goods and/or Services, either prior to acceptance of an Order or prior to delivery of the Goods and/or Services, those increases shall be payable by the Purchaser.

## **5. Description**

(a) A Purchaser must ensure that the Goods and/or Services the subject of an accepted Order are suitable for their intended purpose, and warrants and represents that the Goods and/or Services the subject of an accepted Order are both suitable for their intended purpose and shall conform with all legal requirements associated with that intended purpose.

(b) A Purchaser is responsible to ensure that the Company is made aware in writing of any requirements pertaining to the Goods and/or Services prior to any Order placed. The Company shall not be liable for any Loss suffered as a consequence of any inaccurate or insufficient information provided by a Purchaser concerning any requirements pertaining to the Goods and/or Services.

(c) The Company shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is expressly stated in the Quotation the subject of an accepted Order, and the Purchaser acknowledges and agrees that it has not relied on, nor will it rely on, any representation or warranty with respect to the merchantable quality, description, quality, suitability or fitness for purpose of the Goods and/or Services unless expressly provided for in the Quotation.

(d) Without limiting clause 5(c) of these Terms:

(i) any representation, promise, statement or description made by or on behalf of the Company is expressly excluded and the Purchaser acknowledges that it has relied solely upon its own inspection, skill and judgement to place an Order for the supply of Goods and/or Services from the Company;

(ii) all photographs, weights, illustrations, dimensions and any other particulars given in or accompanying a Quotation or contained in descriptive literature provided by or on behalf of the Company, including as displayed at my ifm, are approximate only and given by way of identification only. The use of such material will not constitute a sale by description between the Company and a Purchaser and any deviations from such material will not vitiate an Agreement or entitle a Purchaser to make any claim made against the Company; and

(iii) the Purchaser warrants to the Company that any Goods and/or Services manufactured, constructed or supplied by the Company which are based in whole or in part upon designs, drawings or specifications supplied to the Company by or on behalf of the Purchaser will not infringe any third party's Intellectual Property Rights. The Purchaser irrevocably and unconditionally agrees to indemnify and keep indemnified the Company from and against any Loss suffered or incurred by the Company arising out of any allegation by a third party that the designs, drawings or specifications supplied to the Company by or on behalf of the Purchaser infringes its Intellectual Property Rights.

## **6. Terms of Payment**

(a) Subject to any terms of credit granted by the Company to a Purchaser ('Credit Facility'), payment for all Company invoiced amounts must be made in full within thirty (30) days following the month of invoicing or as otherwise detailed in a Quotation the subject of an accepted Order (unless otherwise agreed to in writing by the Company).

(b) All payments must be made by direct debit, electronic funds transfer, cash, credit card, company cheque or bank cheque (as determined by the Company).

(c) Any agreement by the Company to grant a Credit Facility or other indulgence to a Purchaser shall not affect that Purchaser's liability to the Company.

(d) If the Purchaser defaults in making payment in accordance with these Terms or any Credit Facility, the Company is entitled to:

(i) charge the Purchaser compound interest calculated on that portion of the outstanding Company invoice or the Purchaser's overdue account ('Outstanding Amount') at two per cent (2%) above the official cash rate detailed at [www.rbnz.govt.nz](http://www.rbnz.govt.nz), calculated and payable daily from the due date until the date on which the Outstanding Amount is paid in full; and

(ii) require the Purchaser to reimburse the Company for all collection costs incurred by the Company, including (but not limited to) all legal costs incurred by the Company calculated on a solicitor and client basis, and any other Loss suffered by the Company arising out of a breach of an Agreement.

(e) Without limiting clause 7(d) of these Terms, in the event that a Purchaser defaults in making any payment in accordance with any Credit Facility, the Company may vary, limit, suspend or withdraw that Credit Facility.

(f) Unless specifically agreed by the Company in writing, no deduction is to be made from payment of a Company invoiced amount for any reason, including (but not limited to) any retention monies to guarantee performance of an Agreement.

#### **7. Credit Information & Credit Facilities**

(a) A Purchaser irrevocably authorises the Company, its servants and agents to make such enquiries from time to time as it deems necessary to investigate the credit worthiness of a Purchaser and, where a Purchaser is a body corporate, its directors, officers and relevant individuals employed by or connected to that Purchaser, including the making of enquiries with persons nominated by a Purchaser as a trade reference or banker, and any other credit provider or a credit reporting agency ('Information Sources').

(b) To the fullest extent permitted by the Privacy Act, the Purchaser:

(i) authorises the Information Sources to disclose to the Company such information concerning the Purchaser and, where the Purchase is a body corporate, its directors, officers and relevant individuals employed by or connected to the Purchaser, which is within their knowledge and which is reasonably required by the Company; and

(ii) agrees that all information provided on any completed credit application submitted to the Company by the Purchaser and, where the Purchase is a body corporate, all information concerning its directors, officers and relevant individuals employed by or connected to the Purchaser, may be disclosed by the Company to a credit reporting agency or any other interested person.

(c) The Purchaser acknowledges that any Credit Facility granted by the Company is granted by the Company on the basis of its reliance on all information supplied by, and representations made on behalf of, the Purchaser (whether via Information Sources or otherwise).

(d) Any Credit Facility granted shall be at the sole discretion of the Company and the Purchaser acknowledges that the Company has no obligation to grant, or continue to provide any Credit Facility to the Purchaser. The Purchaser is not entitled to any Credit Facility until it receives written notification from the Company to that effect and the Company may, at any time, vary, limit, suspend or withdraw any Credit Facility. Termination by the Company of any Credit Facility may be communicated either verbally or in writing.

#### **8. Acceptance and Delivery**

(a) Unless otherwise specified by the Company in writing, the point of delivery of Goods will be at the Purchaser's premises or such other location as advised by the Purchaser ('Premises'). The Purchaser represents that it is either the owner of the Premises or has authority of the Premises owner for delivery of the Goods to the Premises.

(b) Delivery of Goods shall be deemed to be complete when the Goods are (a) collected by a Purchaser, (b) delivered to the Premises, or (c) delivered to a carrier as nominated by the Company and/or the Purchaser.

(c) In the event that a Purchaser is not in attendance at the Premises at the time of delivery, the Company may leave the Goods and the Company shall not be responsible for any Loss arising or resulting therefrom, including any claim that the Goods were not delivered.

(d) A Purchaser shall be responsible to the Company for all additional costs (including storage and handling) incurred by the Company as a result of (a) the Company's inability to deliver the Goods at the Premises, or (b) a Purchaser's failure to take delivery of the Goods at a time and location specified by the Purchaser. The Purchaser acknowledges that any storage will be at the Purchaser's risk.

(e) A Purchaser is responsible for ensuring that all Goods delivered to the Premises are secured at the Premises and warrants to be responsible for any loss, damage or theft of the Goods delivered to the Premises.

(f) A Purchaser must inspect the Goods immediately on delivery and notify the Company in writing within seven (7) days from the date of delivery of any Goods (or such other period as agreed in writing by the Company) alleged not to be in accordance with the Agreement to which they relate or otherwise not to be in accordance with these Terms. If the Purchaser fails to give such written notice, the Goods will be deemed to be in all respects in accordance with the Agreement to which they relate and these Terms and the Purchaser must accept and pay for the Goods.

(g) Unless otherwise agreed to in writing by the Company, all insurance, packaging & freight handling costs and charges associated with Goods ordered will be the responsibility of, and charged to, the Purchaser.

(h) A delivery docket (or similar) signed by a representative of the Purchaser shall be conclusive evidence of delivery of the Goods.

(i) The Company may resell any Goods the subject of clause 8(d) of these Terms within seven (7) days from the agreed date of delivery and, at its option, deem the Agreement to which they relate repudiated or by subsequently substituting other goods for the Goods and treat the Agreement as subsisting.

#### **9. Delay in Delivery and Force Majeure**

(a) The time of delivery of Goods and/or performance of Services the subject of an accepted Order shall be as agreed in writing by the Company, or otherwise shall be the time when the Goods and/or Services are ready for delivery and/or performance by the Company.

(b) A delivery date is an estimate only and although the Company will make all reasonable efforts to achieve that delivery date, the Company will not be liable to a Purchaser for any Loss should delivery not be made (in the case of Goods) or performed (in the case of Services) by that date.

(c) If the Company does not receive instructions from a Purchaser necessary to enable the Company to deliver Goods and/or perform Services the subject of an accepted Order within fourteen (14) days of the Company notifying the Purchaser that the Goods and/or Services are able to be delivered/performed, the Company will be entitled to invoice the Customer for the full Agreement price (associated with such Goods and/or Services) and the Purchaser will be liable for all costs (including storage and handling) incurred by the Company as a result of the Purchaser's failure to provide such necessary instructions. In the case of Goods, the Purchaser acknowledges that any storage will be at the Purchaser's risk.

(d) If for any cause beyond the Company's control, including but without limitation, any act of God, war, strike, lock out, industrial dispute, governmental or semi- governmental award, enactment, priority or restriction, fire, flood, storm or tempest, delay in obtaining licences, transport, labour, or materials, accidents, damage to the Company's works or business of those of its suppliers, the Company is prevented from delivering Goods and/or performing Services the subject of an accepted Order at a time agreed, the Company will be entitled, at its option, to either extend the time for delivery and/or performance for a reasonable period or to rescind the Agreement (associated with such Goods and/or Services ) and, in such a case, the Purchaser will not have any claim for Loss of whatsoever nature and must pay to the Company the cost for all Goods delivered and/or Services performed prior to the date of such rescission, including all Loss incurred and monies paid by the Company in connection with that Agreement without set-off or deduction.

#### **10. Title and Risk**

(a) Title to Goods delivered to a Purchaser will not pass to that Purchaser until payment in full for those Goods (together with any other monies owing by the Purchaser to the Company relating to those Goods) is received by the Company.

(b) Until payment is made in accordance with clause 10(a) of these Terms, Goods in the Purchaser's possession will be held as bailee and the Purchaser shall not create or allow to be created any security interest as defined by the PPSA or any other form of encumbrance over the Goods.

(c) Notwithstanding that title to the Goods has not passed to the Purchaser, the Goods will be at the Purchaser's risk upon delivery and the Purchaser indemnifies the Company against any Loss of whatsoever nature relating to the Goods until payment is made in accordance with clause 10(a) of these Terms.

(d) Until Goods are paid for in full in accordance with clause 10(a) of these Terms, the Purchaser:

(i) must protect and insure the Goods;

(ii) must separately store the Goods and clearly mark the Goods as being the property of the Company; and

(iii) may sell the Goods in the ordinary course of business, but only in its capacity as fiduciary agent of the Company. All proceeds received directly or indirectly from any dealing with the Goods are held by the Purchaser on trust for the Company until the Purchaser's liability to the Company associated with those Goods is fully discharged.

(e) Until title in Goods has passed to the Purchaser, the Purchaser irrevocably authorises and licenses the Company to enter any premises owned or occupied by the Purchaser, or any other place where the Goods are stored, to inspect or repossess the Goods.

#### **11. PPSA**

(a) For the purposes of this clause, the terms used in this clause, where applicable, have the meanings given to them in the PPSA.

(b) A Purchaser acknowledges that the Company has, under these Terms, a security interest in the Goods until title in those Goods passes to the Purchaser in accordance with clause 10 of these Terms. Each security interest secures payment by the Purchaser of all amounts owing from time to time by the Purchaser to the Company, whether on account of the supply of Goods or otherwise. To avoid any doubt, each security interest attaches to the proceeds of collateral constituted by the Goods, notwithstanding that the Purchaser may have dealt in any way with the Goods (including by selling as provided for in clause 10(d)(iii) of these Terms).

(c) Each security interest arising under these Terms attaches to Goods when the Purchaser obtains possession of the Goods.

(d) A Purchaser agrees to implement, maintain and comply in all material respects with, procedures for the perfection of each security interest arising under these terms and conditions under the PPSA, including taking all steps necessary:

(i) for the Company to obtain the highest ranking priority possible in respect of each such security interest (such as perfecting a purchase money security interest); and

(ii) to reduce as far as possible the risk of a third party acquiring an interest free of the Company's security interests in the Goods.

(e) Any time a Purchaser makes a payment to the Company, irrespective of whether the payment is made under or in connection with Goods and/or Services or otherwise under these Terms, the Company may apply that payment:

(i) first, to satisfy any obligation that is not secured;

(ii) second, to satisfy an obligation that is secured, but not by a purchase money security interest; and

(iii) third, to satisfy an obligation that is secured by a purchase money security interest for that obligation and using proceeds from the sale of the collateral subject to that purchase money security interest; and

(iv) fourth, to satisfy an obligation that is secured by a purchase money security interest using funds or proceeds from any source;

or, despite the foregoing, in any manner the Company sees fit.

(f) To the extent permitted under the PPSA, a Purchaser agrees that all rights provided for under the PPSA associated with the enforcement of security terms (including, but not limited to, the right of a Purchaser to be provided notice by the Company) will not apply to the enforcement of that security interest.

(g) Without limiting the operation of this clause:

(i) the Company need not give any notice under the PPSA (including a notice of verification statement or similar) unless the notice is required by the PPSA and cannot be excluded; and

(ii) if the Company is required to give a notice to a Purchaser under the PPSA, and the Purchaser may, under the PPSA, waive the Purchaser's right to receive that notice, then the Purchaser hereby waives that right.

## **12. Return of Goods**

(a) The Company may elect, but is not obliged, to accept a return of Goods previously supplied for credit. In such a case, the following conditions shall apply:

(i) authorisation must be first obtained from the Company in the form of a Goods Return Authorisation (GRA) number issued by the Company;

(ii) the Purchaser's request for credit must quote the GRA number, the original invoice number and the date on which the Goods were supplied;

(iii) Goods not accompanied by a GRA number and proof of purchase will not be accepted and will be returned to the Purchaser with freight and transport charged to the Purchaser;

(iv) Goods must be in the identical condition as supplied;

(v) Goods must be returned with all Company and/or manufacturer packaging intact and unmarked, complete with any instruction sheets supplied; and

(vi) all outward and inward freight and transport charges will be the sole responsibility of the Purchaser. If not prepaid by the Purchaser, all such charges will be deducted from, or offset against, the amount of credit.

(b) The following Goods cannot be returned for credit under any circumstances:

(i) Goods specially or custom made, including Goods cut to length and non-stock items;

(ii) Goods altered or damaged by the Purchaser in any way; or

(iii) Goods supplied to the Purchaser more than three (3) months prior to the request for return.

(c) All Goods validly returned to the Company in accordance with this clause will incur a restocking fee payable by the Purchaser (and which fee may be deducted from, or offset against, the amount of credit):

(i) 1-20 days from date of despatch - base restocking fee of \$50;

(ii) 21-30 days from date of despatch – base restocking fee of \$50 plus 2% of the invoiced value of the returned Goods;

(iii) 31-60 days from date of despatch – base restocking fee of \$50 plus 6% of the invoiced value of the returned Goods; and

(iv) 61-90 days from date of despatch – base restocking fee of \$50 plus 8% of the invoiced value of the returned Goods.

### **13. Intellectual Property Rights**

A Purchaser acknowledges and agrees that all Intellectual Property Rights developed by the Company and embodied in or used in connection with the manufacture of Goods and/or the performance of the Services is and remains the sole property of the Company.

### **14. Limitation of Liability**

(a) The only conditions, guarantees and warranties which are binding on the Company in respect of the state, quality, condition, suitability or fitness of the Goods and/or the Services are those detailed in clause 16 of these Terms or as otherwise imposed and required to be binding by law (including the Consumer Law) which cannot be expressly excluded. All other conditions, guarantees and warranties, whether express or implied by law, in respect of the state, quality, condition, suitability or fitness of the Goods and/or the Services which may, apart from this clause, be binding on the Company are hereby expressly excluded.

(b) To the extent permitted by law, the liability, if any, of the Company arising from a breach of any condition, guarantee or warranty that apply to the Company shall, at the Company's option, be limited to and completely discharged by:

(i) if relating to Goods, to the replacement of the Goods, the supply of equivalent Goods, the repair of the Goods, the payment of the cost of having the Goods repaired or replaced, or provision of credit; and

(ii) if relating to Services, the re-supply of the Services, or payment of the cost of having the Services supplied again.

(c) A Purchaser acknowledges and agrees that the Company has no liability to it or any person for any Loss of any kind whatsoever including without limitation, for any costs associated with replacing or rectifying the Goods (other than the Company's actual costs associated with same), or any Consequential Loss arising from any failure, breakdown, defect or deficiency in the Goods and/or the Services) even if due to the negligence of the Company arising out of or in connection with the Goods and/or the provision of the Services.

(d) Without limiting the operation of these Terms generally, where Goods and/or Services supplied by the Company to the Purchaser consist, in whole or in part, of software or software development (whether standard or developed specifically for a Purchaser) ('Software'), the Company does not warrant that the Software will necessarily:

(i) will meet the Purchaser's requirements or expected outcomes, or be fit for purpose;

(ii) will not be free of bugs, errors, viruses or other like defects;

(iii) will be compatible and/or integrate with any third party provided software or other computer programs; or

(iv) deliver or generate results, output or data that is accurate, complete or reliable.

## **15. my ifm**

- (a) By registering with my ifm and/or by using the my ifm services, a User acknowledges and agrees that:
- (i) these Terms and the FAQs form part of any Agreement between it and the Company that may be entered into as a consequence; and
  - (ii) to the extent of any inconsistency between these Terms and the FAQs, these Terms prevail to the extent of any such inconsistency.
- (b) When using the my ifm services, a User:
- (i) warrants that it is able to form a legally binding arrangement with the Company and is, in the case of an individual, 18 years or older;
  - (ii) shall not post false, inaccurate, misleading or inappropriate content (including Personal Information);
  - (iii) shall not distribute viruses or other technologies (intentionally or otherwise) that may harm my ifm;
  - (iv) shall not copy, modify or distribute rights or content from my ifm, including all Intellectual Property Rights owned or licensed to the Company.
- (c) The Company reserves all rights to, at any time and for any reason, suspend, prohibit access to, or terminate a User's account with my ifm.
- (d) The Company may, at any time, cancel a User's account that has been inactive for a reasonable period of time, to be determined by the Company in its absolute discretion.
- (e) As a Purchaser utilising my ifm services, all fees and applicable taxes payable with respect to all purchases made are subject to these Terms.
- (f) While the Company will make all reasonable efforts to ensure my ifm, and the services provided within my ifm, operates within a safe trading environment, a User accepts that there are risks when trading online. A User shall not hold the Company responsible for any Loss that may arise as a consequence of its use of my ifm and the my ifm services.
- (g) A User acknowledges and accepts that, on occasion, due to operational, maintenance related, internet related or other reasons, my ifm may be suspended or disrupted. A User shall not hold the Company responsible for any Loss that may arise as a consequence of such suspension or disruption.
- (h) My ifm, the Website and their contents are subject to copyright which is owned or licensed to the Company. A User may not use any Intellectual Property Rights displayed therein.
- (i) The Company does not warrant the accuracy or completeness of any information contained within my ifm or the Website and excludes all liability for any Loss arising from any errors or omissions that may exist, or a User's use of my ifm or the Website.
- (j) By use of my ifm or the Website, the Company is released to the fullest extent permitted by law from any and all claims arising out of or related to the use of material or information made available through my ifm or the Website.
- (k) Prices listed on my ifm or the Website relating to Goods displayed may not be current or complete. Further, the Company makes no representation that the Goods displayed are currently available.

## **16. Warranty**

- (a) The Company warrants to a Purchaser that Goods supplied by it will be free from defects in material and workmanship for a period of sixty (60) months from the original date of delivery of the Goods. This warranty includes the repair or replacement of a defective Good or the provision of credit. The benefits provided by this warranty are in addition to other rights and remedies which a Purchaser may have under a law (including the Consumer Law) in relation to the Goods to which this warranty relates.
- (b) This warranty does not cover:
- (i) electronic tubes and components, illumination sources, items wholly or partly of glass, silica or ceramic material, thermocouples, batteries,
  - (ii) electrical elements and reconditioned replacement parts, such as exchange circuit boards;
  - (iii) faults caused by use other than in accordance with instructions or directions provided by the manufacturer or the Company;
  - (iv) faults caused by incorrect installation, misuse, abuse, unauthorised modification, normal wear and tear and inadequate or complete lack of maintenance;



(v) wilful, negligent or reckless acts or omissions by the user of the Goods; or

(vi) damage caused by improper storage conditions, or natural disasters.

(c) A warranty claim made pursuant to this clause is made subject to the following conditions:

(i) the Purchaser has notified the Company in writing of the alleged defect and obtained a Goods Return Authorisation (GRA) number from the Company; and

(ii) the Goods the subject of the warranty claim are returned to the Company (a) accompanied by a GRA number and proof of purchase, (b) in the identical condition as delivered, (c) with the manufacturer packaging intact and unmarked, complete with any instruction sheets supplied, and (d) with accurate and complete details of the Purchaser's return address.

(d) The cost of freight and transport (or similar) of Goods returned to the Company and returned to the Purchaser, the subject of the warranty claim, is the Purchaser's sole responsibility. If such costs are not prepaid by the Purchaser, it shall be immediately due on demand by the Company (or otherwise deducted from, or set off against, any credit granted by the Company to the Purchaser).

(e) All warranty claims must be directed to the Company by one of the following methods:

(i) By post – Unit 13, 930 Great South Road, Penrose, Auckland;

(ii) By phone – (09) 579 6991

(iii) By fax – (09) 579 9282

(iv) By email - sales.nz@ifm.com

## **17. Privacy**

(a) The Company is entitled to collect, use and disclose a Purchaser's Personal Information:

(i) for any reason or purpose permitted under these Terms;

(ii) to market to the Purchaser about products and/or services that may be offered by the Company from time to time; and

(iii) for any other purpose as specified in the Privacy Policy.

(b) The Company may disclose the Purchaser's Personal Information to:

(i) its parent company based in Germany; and

(ii) third parties that may assist it in providing Goods and/or Services to the Purchaser.

(c) Without a Purchaser's Personal Information, the Company may not be able to supply Goods and/or Services to the Purchaser.

(d) The Privacy Policy contains information about how a Purchaser may access the Purchaser's Personal Information held by the Company and information about how to seek correction of such information if necessary. The Privacy Policy also contains information about how a Purchaser may complain about a breach of the privacy principles established under the Privacy Act, and how the Company will deal with such a complaint.

(e) The Privacy Policy can be viewed at the Website.

## **18. General**

(a) These Terms shall be construed according to the laws of New Zealand and all disputes arising as and between the Company and a Purchaser, whether arising from the supply (or intended supply) of Goods and/or Services by the Company to the Purchaser, my ifm or otherwise, shall be determined by the Courts in that State & country (as relevant).

(b) These Terms can be varied, amended, added to or repealed (in whole or in part) at any time by the Company as published at the Website from time to time.

(c) The Company may assign, sub-contract or delegate the performance of any part of the Services, the subject of an accepted Order, to any person on any terms at the Company's sole discretion.

(d) Without limiting all other terms detailed in these Terms, a Purchaser expressly waives all prior discussions, communications, negotiations and representations that may have been made by the Company that are in conflict with these Terms (and any Agreement as and between the Company and a Purchaser).

(e) A waiver of any of the Company's rights arising from a breach of these Terms by a Purchaser must be in writing and signed by an authorised representative of the Company. A failure or delay in exercise by the Company of a right conferred by these Terms does not result in a waiver of that right.

(f) Neither these Terms nor any part is to be construed against the Company on the basis that it was responsible for its drafting.

(g) GST if and when applicable is an extra charge for a Purchaser's account. If not applicable, a GST exemption certificate must be signed by the Purchaser and accompany the Purchaser's official order.

(h) If by any reason of any legislation, regulation, government action or other cause beyond the Company's control any charge import duty or expenditure of any kind which is not at present chargeable or applicable, is imposed, becomes payable or applicable, or is incurred upon, to, or in respect of the Goods hereby sold, such additional cost will be added to the purchase price and payable by the Purchaser.

(i) Any provision of these Terms which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remainder of these Terms which will continue to operate in full force and effect in that or any other jurisdiction.

**Version dated:** August 2024