

STANDARD TERMS OF TRADE

1. Definitions

1.1 In these Terms unless the context requires otherwise:

- "Criticlow" means Criticlow Limited.
- "Confidential Information" means all knowledge and information of which a party, its employees or agents may become aware, relating to the business of the other party which is not publicly available.
- "Developed Software" means software developed or customised by Criticlow for You under these Terms.
- "Force Majeure" means any event outside the reasonable control of a party and includes, without limitation, fires, or other casualties or accidents, power outages, acts of God, strikes and lockouts, severe weather conditions, supplier delay due to force majeure, war or other violence, or the introduction of any law, order, proclamation, regulation, ordinance, demand or requirement of any governmental agency.
- "GST" means the applicable goods and services tax rate applying in accordance with the Goods and Services Tax Act 1985 (NZ), (or current Australian GST legislation if applicable).
- "Intellectual Property" means all intellectual property rights including, without limitation, copyright, patent and design rights, drawings, documents, data, ideas, procedures, calculations and all other statutory and common law rights and interests.
- "Intellectual Property Rights" means copyright, trademark, design, patent, or any other intellectual property rights.
- "Price" means the price for the Products and Services stated in the Proposal.
- "Products" includes licensed data, software and any other associated or ancillary products, to be supplied to You under the Proposal.
- "Proposal" means Criticlow's written proposal to You detailing the Products and Services to be supplied, a renewal proposal or a quotation for Products or Services.
- "Services" means the professional services offered and agreed to be provided by Criticlow to You under the Proposal and may include, without limitation, installation, helpdesk, support training services and any associated services.
- "Terms" means these standard terms together with the Proposal to which these Terms are attached.
- "Third Party Software" means any software developed by a person other than Criticlow or You, subject to the Third Party Provider's licence terms, and which is to be supplied to You.
- "Third Party Software Provider" means the developer/licensor of Third Party Software.
- "You" means You as set out in the Proposal (whether an individual, company, or organisation).

2. Precedence of Terms

2.1 The Proposal is subject to these standard terms, except to the extent that the Proposal expressly modifies any term in relation to the subject of the Proposal.

2.2 These Terms shall not be superseded or replaced by any terms contained in any other document presented by You as your purchase order, unless agreed to in writing by Criticlow.

3. Criticlow's Responsibilities

3.1 Criticlow will:

- Use its best endeavours to supply to You the Products and Services for the Price stated or estimated in the Proposal,
 - use all reasonable endeavours to perform all actions which are agreed to be Criticlow's responsibility within the timeframes agreed;
 - carry out its obligations with skill, care, diligence and employing techniques, methods, procedures and materials of a quality and standard in accordance with industry practice in New Zealand (or Australia if applicable), having regard to such finance, physical or time constraints as You may impose;
 - use all reasonable endeavours to ensure that it and any employee or contractor complies with all reasonable directions and procedures relating to occupational health and safety and security as they apply to your premises;
 - use all reasonable endeavours to keep You informed of any event likely to materially affect Criticlow's performance of the Services or delivery of the Products; and
 - ensure that the Services are performed by suitably qualified or experienced personnel who have the requisite skills and expertise for the purpose.
- 3.2 You acknowledge that the timeframes referred to in clause 3.1.b are estimates only and whilst Criticlow will make all reasonable endeavours to meet such timeframes, it shall in no way be liable to You where those timeframes are not met.
- 3.3 In addition to clause 3.2, Criticlow will not be responsible or liable, in any way, for any breach of any of its responsibilities under sub-clause 3.1, where such breach is as a result of or contributed to by You failing to perform or delaying in your performance of any of your responsibilities.

4. Your Responsibilities

4.1 You will:

- use all reasonable endeavours to perform all actions which are agreed to as your responsibilities within the timeframes agreed,
- ensure that the Products are used in an environment that meets specifications as advised by Criticlow or any Third Party Software Provider;
- establish backup procedures and system security and recovery procedures for the Products (if applicable) and subject to clause 13 according to generally accepted industry practice;
- make freely available to Criticlow (free of charge) such information, facilities, access and services as and when reasonably required by Criticlow to enable it to fulfil its obligations under these Terms;
- keep Criticlow informed of any changes to your business operations that may impact of the delivery of the Products and Services; and
- advise Criticlow immediately if You become aware of any unauthorised use or disclosure of Confidential Information or infringement of any licence relating to any of the Products.

5. Failure to Meet Responsibilities

5.1 Without prejudice to its other rights or remedies under these Terms or at law, if You fail to meet your obligations under clause 4.1 or otherwise under these Terms, then:

- You shall pay all additional charges and expenses arising from any additional work or downtime incurred by Criticlow as a consequence; and
- Criticlow shall be entitled to an extension of time to meet its own obligations, which recognises the effects of your failures.

6. Price

6.1 You shall pay the Price as set out in the Proposal.

6.2 Unless otherwise stated in the Proposal, the Price is for data and software supplied by Criticlow to its specifications and is exclusive of installation and maintenance costs.

6.3 If the Proposal provides for the Price to be calculated by the amount of Services provided, the Price will be invoiced on the last day of each month during which those Services are provided.

6.4 The Price is plus GST and other taxes, which shall be paid by You, and is in New Zealand dollars (unless otherwise stated).

6.5 The Price does include import tax duties.

6.6 Where Criticlow provides You with a quotation, it is based on information available to it at the time, and Criticlow may charge You more or less than the amount stated if its costs (e.g. costs of labour, materials, tax, exchange rates or other costs) or the specifications change.

6.7 Criticlow reserves the right to invoice You for all reasonable additional out of pocket expenses, including but not limited to accommodation, meals, travel, telecommunications, printing, copying and courier fees. Such amounts will be invoiced to You monthly as they are incurred.

7. Payment

7.1 Unless otherwise stated in the Proposal or agreed in writing by Criticlow, You shall pay for the supply of Products and Services on or before the 20th of the month following the date of invoice.

7.2 All payments must be made in New Zealand dollars (unless stated otherwise on the invoice) and must be made without set-off or deduction.

7.3 Criticlow may require You to pay a deposit, being an advance payment for the Products and Services to be supplied.

7.4 Criticlow may, at any time and for any reason, notify You that it is ceasing to supply the Products or Services to You on credit. This is without prejudice to your obligation to pay all amounts outstanding until the date of Criticlow's notification to You under this sub-clause.

8. Default

8.1 You will be in default if:

- You fail to pay an amount due under the Terms by the due date for payment; or
 - You commit a breach of any of your other obligations under the Terms, or the terms of any other contract You have entered into, or that You enter into in the future, with Criticlow or one of its related entities; or
 - You become insolvent, have a receiver appointed, enter into any composition or arrangement with creditors, do any act which would render You liable to be placed in liquidation or have a receiver appointed over your property, commit any act of bankruptcy, or cease to be a full legal capacity;
 - You threaten to cease to carry on business or intend to take any steps to cease trading; or
 - an event or series of events (whether related or not) occurs which, in Criticlow's opinion may cause a material adverse change in your ability to meet your obligations to Criticlow; or
 - You assign any of your rights or Obligations under the Terms other than in accordance with clause 19.
- 8.2 If You are in Default then Criticlow may, at its option, do any one or more of the following:
- charge You default interest at 2% per annum above the base lending rate of the National Bank of New Zealand on any late payments calculated on a daily basis from the due date of payment until the date payment is received;
 - require You to remedy the default in the manner and within a period that Criticlow advises;
 - require You to pay to Criticlow all amounts You owe immediately;
 - suspend or terminate your account with Criticlow;
 - enforce any security interest(s) created by these Terms;
 - exercise any rights that Criticlow has under these Terms or that are available to it at law.

9. Variations

9.1 Any changes to these Terms shall be valid only if agreed between the Parties and recorded in writing.

9.2 Any delay in the provision of Services or Products due to an agreed variation to the Terms shall not alter the due date for payment as set out in the Proposal or these Terms unless specifically agreed in writing.

9.3 If the parties agree to vary the quantity of any Product or Service supplied, Criticlow reserves the right to vary the unit price of such Product or Service.

10. Delivery

10.1 Unless otherwise stated, delivery shall be deemed to occur on supply of the Products and or Services at your place of business.

10.2 Criticlow may engage a carrier to deliver the Products to You. You acknowledge that any dates given for shipment or delivery are stated in good faith only and do not create a binding obligation on Criticlow.

10.3 You shall make no claim against Criticlow on account of late shipment or delivery, however caused.

10.4 All freight charges will be at Criticlow's cost, unless otherwise stated.

11. Title and Risk

11.1 The Intellectual Property Rights in any Products supplied under or used in performing these Terms are and will remain owned by Criticlow, and in respect of the Third Party Software, the Third Party Software Provider.

11.2 You acknowledge that such Products comprise proprietary information and are subject to Intellectual Property Rights and You agree not to do or allow to be done anything which is inconsistent with those rights.

11.3 Risk of loss or damage to Products supplied to You passes to You upon delivery.

11.4 Risk of loss or damage to physical items supplied by You to Criticlow for use in performing the Services or providing the Products remains with You.

11.5 You acknowledge that the Intellectual Property Rights survive termination of the Terms.

12. Personal Property Securities Act 1999 (PPSA)

12.1 Title to, and property in, any Developed Software supplied by Criticlow to You and identified in the proposal as intended to be transferred to You (in this clause the "Collateral") shall not pass to You until payment of the total purchase price for the Collateral is received.

12.2 For the purposes of the Personal Property Securities Act 1999 (PPSA), this clause 12 creates a security interest in the Collateral to secure your obligation to pay the total purchase price for the Collateral.

12.3 You hereby grant to Criticlow a security interest in the Collateral and in any proceeds arising from the sale of the Collateral to secure your obligation to pay the purchase price for the Collateral and any other obligations of yours to Criticlow under these Terms ("the Obligations") as and when the same become due.

12.4 You agree that if You are in breach of any of its Obligations:

- You will, promptly upon receiving a written request from Criticlow and at your cost and expense, deliver all or any of the Collateral to Criticlow at such place or places as it directs;
- if You fail to deliver any of the Collateral as required under these Terms, Criticlow may, at any time, either itself or through an authorised agent, enter into any place where the Collateral is located and remove the Collateral;
- Criticlow may sell all or any of the Collateral without giving prior notice of the sale to You; and
- if Criticlow proposes to take all or any of the Collateral in satisfaction of the Obligations pursuant to s 120(1) of the PPSA, You waive your right to require Criticlow to sell the Collateral and agree that notwithstanding s 120(1) of the PPSA, You shall remain liable to Criticlow for the difference between the market value of the Collateral at the time it is first able to be sold by Criticlow free from all your rights and interests and other persons pursuant to s 123(1) of the PPSA and the amount of the Obligations which are owed to Criticlow.

13. Supply of Software

13.1 All software provided by Criticlow to You under these Terms for your use (including Developed Software, to which title has not been or is not intended to be transferred to You, and Third Party Software) is subject to the licence terms on which such software is supplied, including, for the avoidance of doubt, the Third Party Provider's end user licence agreement. You must use such software strictly in accordance with the terms of the applicable licence.

13.2 In regards to software other than Third Party Software, and subject to any licence agreement Criticlow may grant You, Criticlow grants you a non-exclusive, non-transferable right and licence to use the software (other than Third Party Software) solely for your internal business purposes as set out in the Proposal. You shall be entitled to make two copies of such software for backup and security purposes ("the Copies") provided that all copyright notices are incorporated into the Copies. The Copies are subject to the same restrictions as the original software provided by Criticlow to You, including these Terms.

13.3 Criticlow warrants that, on payment of the relevant specified licence/ subscription fees, You are licensed to use the software supplied to You in accordance with the terms of the relevant licence for such software, or in accordance with clause 13.2 (if applicable).

14. Confidential Information

14.1 Each party shall keep confidential at all times all Confidential Information of which it, its employees or agents may become aware of in relation to these Terms and will not use, communicate, cause to be communicated, copy, make available or otherwise resupply any Confidential Information to any third party:

- without the consent of the party supplying such information; or
- unless it is to those of its employees, agents or representatives to whom disclosure is necessary for the purposes of fulfilling the party's obligations under these Terms.

14.2 The obligations of confidentiality as set out in clause 14.1 shall not apply to any Confidential Information which:

- is, or at any time becomes, available to the public through no fault of that party; or
- is lawfully disclosed to such persons by third parties not under confidentiality obligations; or
- is independently developed by the recipient party without the use of the other party's confidential information; or
- is required to be disclosed by the recipient party by governmental agency or law; or
- is, or is related to, these Terms and/or its performance; and is disclosed to its related to its companies, solicitors, auditors, insurers or accountants.

14.3 The rights and obligations as set out in clause 14 survive termination of the Terms.

15. Warranties

15.1 Criticlow warrants that:

- it will make all reasonable endeavours to comply with its responsibilities as set out in clause 3;
- the Products and Services will comply with the standards and specifications contained in the Proposal.

15.2 The warranty set out in sub-clause 15.1:

- applies for only 90 calendar days (the Warranty Period) from the date of delivery of the Products or Services; and
- is excluded if any problems are caused by you, or any third party components or other items not approved by Criticlow; or
- your negligence or that of your employees or contractors; or
- if there is a substantial change by You, or at your request, in the operational use of the Products and Services above what was agreed between the parties.

15.3 Your sole remedy for a breach of the warranty contained in clause 15.1 shall be for Criticlow to provide replacement Products or Services during the Warranty Period at Criticlow's cost and/or (at Criticlow's discretion), provide a refund of any monies paid.

15.4 The warranty in clause 15.1 replaces all other representations or warranties (statutory, express or implied) by Criticlow. All such representations and warranties (except any which may not lawfully be excluded) are expressly excluded, including, without limitation, the implied warranties of merchantability and fitness for any particular purpose. The parties agree that the Products and Services under these Terms are supplied for the purposes of a business and any rights granted under the Consumer Guarantees Act 1993 are excluded.

15.5 In any event, where Criticlow is found liable for direct loss or damage suffered by You due to any material breach of these Terms by Criticlow, its liability is limited, in each case, to the lesser of:

- the total amount received by Criticlow under these Terms in one year; or
- \$100,000.00.

15.6 Criticlow will, under no circumstances, be liable under the law of tort, contract or otherwise for any direct or indirect loss or damage (including, without limitation, loss of profits or savings or for any indirect or consequential loss or damage), however caused, arising out of, or in connection with, the performance or non-performance of these Terms except as set out in clause 15.5.

16. Indemnity

16.1 You hereby indemnify Criticlow against all costs and liabilities incurred as a result of:

- accessing, using or maintaining your software and/or equipment;
- possession or use of your data, our data, or other related data, products or records;
- delivering materials or information to a third party at your request.

16.2 You also indemnify Criticlow from and against any claim, suit, action or proceeding (collectively called "Action") brought against Criticlow to the extent that such Action is based on a claim that Criticlow's use of any product, service or information provided by You infringes any patent, copyright, trade secret or other proprietary right.

17. Force Majeure

17.1 No claim or liability will arise against Criticlow, nor will there be a breach of these Terms, if, and to the extent that, Criticlow's failure or omission to carry out or observe any of the conditions of these Terms arises by reason of Force Majeure.

18. Termination

18.1 Criticlow may terminate these Terms by notice to You if clause 8.2(d) applies.

18.2 The provisions of clauses 8 and 18.1 do not affect Criticlow's right to suspend or terminate your account at any time and in its sole discretion.

18.3 Termination of these Terms for any reason shall not affect:

- the rights of Criticlow against You which have accrued up to and including termination;
- the licence terms applicable to any product retained by You; and
- the provisions of these Terms that by their nature survive termination, including Intellectual Property Rights, indemnities, limitation of liability and confidentiality provisions.

18.4 On termination of these Terms for any reason, You shall pay all monies due down to the date of termination and shall return any of Criticlow's property that is in your possession or control.

18.5 Criticlow may require You to deliver to Criticlow, at your expense, all Products supplied under the Terms then terminated, together with all documentation and other materials relating thereto, except for those products fully paid for; and

18.6 Criticlow will not be required to refund any sums paid by You.

19. Assignment

19.1 You shall not assign or transfer the rights or Obligations under these Terms to a third party without the prior approval of Criticlow.

19.2 Criticlow may resell its performance under these Terms as it sees fit, including sub-contracting any part of the work to be performed by it under these Terms. Notwithstanding any sub-contracting by Criticlow, Criticlow shall remain liable to You for performance of these Terms.

20. Solicitation of Staff

20.1 Without the prior written permission of the other party, neither party shall solicit for employment (directly or indirectly), engage or contract with any party who is employed or contracted by the other party or who has been employed or so contracted within the past three months.

21. Costs

21.1 You must pay Criticlow's costs and expenses (including legal costs as between solicitor and client) and of incidental to the enforcement or attempted enforcement of Criticlow's rights, remedies and powers under these Terms.

22. Dispute Resolution

22.1 If either party has any dispute with the other in connection with these Terms:

- that party will promptly give full written particulars of the dispute to the other, addressed to and from the CEO or Managing Director of both parties;
- the parties will promptly meet together and in good faith try and resolve the dispute.

22.2 If the dispute is not resolved within 7 days of written particulars being given (or any longer period agreed to by the parties) the dispute will be referred to mediation.

22.3 A party must use the mediation procedure to resolve a dispute before commencing any other dispute resolution proceedings.

22.4 The mediation will be conducted by a LEADR panel mediator chosen by the parties or, if they cannot agree, by the President of the New Zealand Law Society or the President's nominee.

22.5 If the dispute is not resolved by mediation the parties will refer the dispute to a single arbitrator.

22.6 The single arbitrator will be chosen by the parties or, if they cannot agree, by the President of the New Zealand Law Society, or the President's nominee.

22.7 The arbitration will be conducted in accordance with the Rules in Schedules 1 and 2 of the Arbitration Act 1996.

22.8 The parties must always act in good faith and cooperate with each other to promptly resolve any dispute.

22.9 The procedures and time frames for any mediation or arbitration will be fixed by the mediator or arbitrator (as appropriate) if the parties cannot agree.

22.10 The parties must continue to comply with their obligations under these Terms (including, for the avoidance of doubt, payment of any monies due under these Terms) during the dispute resolution process.

22.11 This clause will not apply to a dispute arising in connection with any attempted re-negotiation of these Terms, or any application by either party for urgent interlocutory relief.

23. General

23.1 These Terms supersede all previous communications, representations, agreements or understandings, verbal or written, in respect of the supply of the Products or performance of the Services.

23.2 If, at any time, any part of these Terms is held (or deemed) to be invalid or unenforceable for any reason, then that part is deemed deleted from these Terms and the Terms will otherwise remain in full force and effect.

23.3 No failure or delay by Criticlow in exercising any power or right under these Terms shall be deemed to be a waiver of any such power or right.

23.4 These Terms shall not be modified or amended except by written agreement between Criticlow and You.

23.5 There are no conditions, warranties or other terms affecting arrangements between the parties relating to the matters which are the subject of these Terms, other than those referred to in these Terms (including the Proposal) and these Terms contain the whole of the contract between the parties.

23.6 These Terms are to be governed by and construed in accordance with the laws of New Zealand.

