



## Wedderburn Scales Ltd Terms and Conditions of Supply

- A. We, us, and similar expressions, refer to Wedderburn Scales Limited (NZCN 445235). You, and similar expressions, refer to you, our proposed customer.
- B. Our terms and conditions always apply. In return for us agreeing to consider your in trade order you agree that these terms and conditions (Terms) apply if we do accept your order or if we do supply you with goods (including equipment, machines and labels) or any services (including repair services), whether for cash, or on credit.
- C. Not obliged to accept orders. We are not obliged to accept any orders from you, but if you do place an in trade order with us then it becomes binding from the moment that we accept it by notification to you. Any quotation is merely an invitation to you to place an order with us. If you offer to purchase goods based on a quotation from us, then your offer is subject to these Terms.
- D. Our Terms overrule any other form. These Terms prevail even if they are inconsistent with anything in any earlier or later order form or similar document.

### 1. DEFINITIONS

**Authorised User** means a natural person invited by the administrator to access and use the Software as a Service under your customer account.

**Claim** means a claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action, however arising and whether ascertained or unascertained.

**Commencement Date** means the date you sign these Terms.

**Copy** means any manuscript, general copy, graphics, logo and other digital display material and/or content supplied by you for the supply of the Printed Goods.

**Costs** means any of the following charges that may be charged in addition to the Purchase Price, Hire Charge or Storage Fee (as applicable) and include but are not limited to:

- (a) our costs for any consumables (i.e. any item that is subject to wear and tear, which are used in the operation of Goods, including for example thermal print heads, platen rollers, inks or any paper products) we supply to you;
- (b) costs of repairing or replacing damaged or missing hired Goods or cleaning hired Goods;
- (c) costs incurred by us in connection with the delivery, collection or installation of the Goods;
- (d) costs incurred in recovering Goods whether abandoned, unlawfully detained or otherwise not returned in accordance with these Terms;
- (e) interest on all outstanding amounts from the due date for payment calculated daily at a rate of 1.5% per month; and,
- (f) all costs and expenses incurred by us in connection with your use of the Goods or any default by you.

**Customer** means any person who engages us to supply any Goods (including by way of sale or hire) or to provide Services in respect of any Goods, and includes any person named as the Customer in a Schedule.

**Customer Supplied Data** means any data or information, excluding the Data, which you input into the SaaS through your account or otherwise provide to us.

**Data** means:

- (a) the raw data which is input into the SaaS; and,
- (b) Outputs generated by the SaaS.

**Goods** means any kind of goods sold or supplied on hire by us to you (including without limitation hardware or consumables) under these Terms, and where the context requires, any Services.

**Hire Charge** means the amount payable to us by you for the hire of the Goods as set out in a Schedule.

**Hire End Date** means in respect of a hire, the date specified in a Schedule.

**Hire Period** means the period commencing on the Commencement Date and expiring on the Hire End Date.

**Intellectual Property Rights** means all present and future intellectual, industrial or proprietary rights conferred by statute, at common law or in equity anywhere in the world, whether issued or pending, registered or unregistered, including all forms of copyright, patents, trademarks, designs, trade secrets, know-how, confidential information and circuit layouts.

**Minimum Hire Period** means the minimum Hire Period (if any) set out in a Schedule.

**Notice to Collect** means a notice issued by us to a Bailor whereby the Bailor is required to collect any Bailed Goods.

**Outputs** means information, data, graphics and any other material generated by the SaaS after receiving and processing the Data.

**PPSA** means the Personal Property Securities Act 1999.

**Printed Goods** means Goods that are labels, packaging, tags, graphics, designs, drawings or other materials supplied by us.

**Privacy Law** means the Privacy Act 2020 and any other applicable laws and codes dealing with privacy or data protection.

**Purchase Price** means the amount payable by you to us for the purchase of any Goods as set out in a Schedule.

**SaaS Services** means any software as a service provided to the Customer as set out in the relevant Schedule.

**Schedule** means a schedule, quote, delivery docket or other document which we may issue and/or require you to sign to hire or purchase particular Goods or obtain the Services.

**Security Interest** has the meaning given in the Personal Property Securities Act 1999.

**Services** means services (including SaaS) provided by us to you as set out in a Schedule, which may include, but are not limited to repairs, maintenance, adjustment and calibration services.

**Storage Fee** means the amount set out in a Schedule for storage of any Goods sold, hired or repaired.

**Term** has the meaning as set out in a Schedule.

**Use** means:

- (a) install and use in production and disaster recovery environment; and,
- (b) copy but only for archival, data protection or back-up purposes and provided that only the strictly necessary number of copies are made.

## 2. GOODS

2.1 **Sales.** We may agree to sell Goods to you from time to time in consideration of your payment of the Purchase Price. We may also agree to hire Goods to you with an option to buy or with purchase to occur at a later time.

2.2 **Hire.** We may agree to hire Goods to you for the Hire Period in consideration for the Hire Charge. You must complete and sign a Schedule and all other documents we may require. Hire terms are referred to in these Terms from clause 3.

### 2.3 Use of Goods

- (a) Use of the Goods must be in accordance with any user guides and safety instructions provided with the Goods.
- (b) Unless a Good is marked with a verification mark, you warrant and represent that the Goods will not be used for trade unless or until those Goods are verified in accordance with the New Zealand Weights and Measures Act 1987. As an express condition to our supply, you hereby agree and acknowledge that you will not use, sell, supply or install the items supplied by us until verified.
- (c) Unless clearly specified, the Goods sold or supplied by us are not to be used for therapeutic purposes.

### 2.4 Storage

- (a) If you notify us that you are not ready for the goods to be delivered on the required delivery date (as described in any order) or when we advise you that they are ready for delivery, then we will store the goods for you for up to 30 days at no cost to you.
- (b) If after 30 days you are still not ready for the goods to be delivered, then you agree to pay us in full for the goods being stored for you.
- (c) If we store any goods for you for over 30 days, then we may charge you a storage fee at our normal storage rate.
- (d) Risk of damage to, or loss, theft, or deterioration of, the goods (and the need to insure them) passes to you once payment is due, irrespective of whether the goods are stored by us or not.
- (e) If:
  - (i) we issue a Notice to Collect with respect to Bailed Goods or Ordered Stock and you fail to collect those goods within the 7 day period specified in that notice; and,
  - (ii) we then issue you a Notice of Disposal with respect to the same goods and you further fail to collect those goods (**Uncollected Goods**) within the 1 month period specified in that notice,then:
  - (iii) all of your right, title and interest in the Uncollected Goods passes to us;
  - (iv) we may sell, dispose of or otherwise deal with the Uncollected Goods as we see fit;
  - (v) any deposits, advance payments or progress payments made by you to us are forfeited by you to us;

- (vi) you forever release us from any claims, actions, suits or proceedings arising in connection with the Uncollected Goods.
- (f) In the event of any inconsistency between these Terms and conditions and any laws dealing with uncollected goods, these Terms and conditions will prevail to the extent permitted by law.
- (g) You are liable to us, and we may charge to you a reasonable storage and administration fee in relation to any Goods or Uncollected Goods from the date we issue a Notice to Collect until the collection, sale or other disposal of the Uncollected Goods. We may also charge you for any expenses we incur which are incidental to any sale or other disposal of the Uncollected Goods under clause 2.4(e)(v).
- (h) The charges under clause 2.4(g) are a debt due and payable to us.
- (i) Any goods or Uncollected Goods stored by us are at your risk.

## 2.5 Installation.

- (a) Unless we otherwise advise you, only persons authorised by us are to install the goods where it is necessary to comply with the warranty of the manufacturer.
- (b) The cost of installation or any related compliance test is not included in the price of the goods unless it is specified in our quotation to you and confirmed in our acceptance of your order.
- (c) If we are to install the goods then we will not be responsible for any costs or losses resulting from any delay in the installation.
- (d) Installation will be complete when the goods operate successfully using our standard test procedure.
- (e) It is your sole responsibility to ensure that the site and services (power, water, air, IT systems and other external connections) are prepared to our specifications as required for the correct installation and operation of the goods. If the site and/or services do not meet the specifications, then you will be liable for the additional costs arising from the delays and difficulties in the installation of the goods.
- (f) Prior to installation or servicing of the Goods (or any other goods that you ask us to install or service) you must backup all files, folders, data, programs or any of your confidential, proprietary, business and/or personal information or removable media. We are not responsible for any of your data (including Data and Customer Supplied Data) lost or corrupted during installation or service/repair of the Goods.

## 3. HIRE TERMS

The following additional terms apply where you have a loan or hire item (Hire Item) and enter into a hire agreement with us (**Hire Agreement**).

- 3.1 **Title.** In addition to the terms above you will not be entitled to offer, sell, sub-let, mortgage, assign, transfer, charge, encumber, pledge or otherwise deal with the Hire Item in any way which is inconsistent with our rights as owner without our prior written consent. Your rights to use the Hire Item(s) is as bailee only and in all circumstances we retain title to the Hire Item even if you go into liquidation or become bankrupt.
- 3.2 **Hire Period.** The period of hire commences when you take possession of the Hire Item or when we deliver the Hire Item in accordance with your instructions and the period of hire ends when the Hire Item is back in our possession (in total the **Hire Period**). The Hire Period includes weekends and holidays and is irrespective of the time the Hire Item is used. Any extension of the Hire Period is subject to our prior agreement and we are not liable for any reason the Goods are not available for hire after the expiry of the Hire Period.
- 3.3 **Hire Charges.** You agree to pay the hire fees set out on the Hire Agreement. You will not be entitled to any discount if the Hire Item is not used for the entire Hire Period.
- 3.4 **Consumables and Trade Materials.** Consumable supplies (such as, but not limited to, paper and labels, printing dies, rubber components, ink and glass rollers, power cords and lamps) are not included. You must pay for them.
- 3.5 **Security Deposit.** You may be required to pay a damage deposit in accordance with this clause. A damage deposit will be automatically charged in addition to the hire charge. We may retain the Security Deposit and apply it to compensate us in respect of any breach of these terms by you and/or towards payment in respect of Goods. We will refund the balance of the Security Deposit (if any) within 14 days of a written request from you, conditional upon the Goods having been returned to our possession and all outstanding Hire Charges and other amounts due to us having been paid in full.
- 3.6 **Late Return of Hire Item.** If you return the Hire Item to us after the end of the Hire Period, you will be charged additional full days hire for each day or part thereof until the Hire Item is returned. In the event that you wish to return the Hire Item early then we may in our absolute discretion accept return and revise the hire charges payable.
- 3.7 **Operation of Hire Item.** You warrant to us at all times that you will:
  - (a) operate the Hire Item safely, in accordance with all laws, only for its intended use and in accordance with the manufacturer's instructions;
  - (b) ensure that persons operating the Hire Item are suitably trained in its safe and proper use;

- (c) return the Hire Item to us in the same good and clean condition it was in when you received it; ordinary wear and tear is excluded. We may charge a cleaning fee if required;
  - (d) display and maintain all safety signs and instructions (as required by law) and ensure that all instructions and signs are observed by operators;
  - (e) not alter, deface, remove or erase any notices or tamper with, damage or repair the Hire Item without our written consent; and
  - (f) accept responsibility for the safe keeping and insure the Hire Item during the Hire Period.
- 3.8 **Electrical equipment and tagging.** You are responsible for arranging at your cost, the re-testing and re-tagging of the Hire Item in accordance with the manufacturer's instructions and the New Zealand Standards' requirements.
- 3.9 **Inspections and location.** You consent to our inspecting the Hire Item from time to time during the Hire Period. In addition, you may arrange a joint inspection with us at the end of the Hire Period. You must not remove the Hire Item from the premises which it was to be located (as stated on the Hire Agreement) without our consent. You must ensure that during the Hire Period the Hire Item is stored safely and securely and is protected from theft, seizure or damage.
- 3.10 **Hire Item breakdown.** In the event that the Hire Item breaks down or becomes unsafe to use during the Hire Period you will:
- (a) immediately stop using the Hire Item and notify us;
  - (b) take all steps necessary to prevent injury occurring as a result of the break down;
  - (c) take all steps necessary to prevent further damage to the Hire Item; and
  - (d) not repair or attempt to repair the Hire Item without our written consent.
- In the event that the Hire Item breaks down or becomes unsafe to use during the Hire Period we will:
- (a) within a reasonable time of a request from you provide remedial maintenance for any Hire Item which is not performing to the standards normal for such a machine because of a latent or patent fault in the machine and not an external cause. We provide service from 8am to 5pm Monday to Friday excluding local public holidays, unless some other period is shown in the Hire Agreement;
  - (b) not impose a hire charge for the period that the Hire Item was broken down or unsafe, nor the costs associated with any repair or replacement; and
  - (c) not be liable for any expenditure, damage, loss, or inconvenience incurred by you arising from a breakdown, howsoever caused.
- 3.11 **Lost, stolen or damaged Hire Items.** You shall be responsible for the Hire Item whilst on hire until it is returned to us. If the Hire Item is lost, stolen or damaged (other than fair wear and tear) during the Hire Period you will be liable for:
- (a) any costs incurred by us in repairing, or the new replacement cost of, the Hire Item; and
  - (b) any other costs whatsoever incurred by us as a result of the loss, theft or damage, including the continuation of the hire charge when the damages were caused by the negligence or act or omission of you.
- 3.12 If Goods hired by you are damaged (other than fair wear and tear) and are:
- (a) capable of repair, we will invoice you for this cost and you must pay this invoice in accordance with clause 9; or,
  - (b) beyond repair, we will invoice you for the cost of new replacements for the damaged Goods as well as any other costs incurred by us due to the loss or damage of the Goods and you will pay this invoice in accordance with clause 9.
- 3.13 **Termination.** We may terminate the hire by giving 90 days written notice to you:
- (a) if you breach any term of these Terms or the Hire Agreement;
  - (b) if you become bankrupt, insolvent, execute a personal insolvency agreement, enter into liquidation, administration, receivership or cease to carry on business; or
  - (c) for any other reason on the giving of 90 days written notice.
- The right of termination is in addition to any other right under these Terms and the Hire Agreement and does not exclude any right or remedy under law or equity or the survival of other terms under these Terms or the Hire Agreement.
- 3.14 **Recovery of Hire Item.** If you are in breach of these Terms or if we terminate the Hire Agreement, we may take all steps necessary (including legal action) to recover the Hire Item including entering your premises to do so.
- 3.15 **Sale of Hire Item.** We may in our absolute discretion and at your request, agree to sell the Goods to you at the expiry of the Hire Period. In that case, clause 2.3(a) applies to the sale elements of the transaction along with all other relevant provisions to the sale. Until the Purchase Price for the Goods bought is paid, the Hire Charges will continue to be payable.
- 3.16 **Variation of Specifications.** We reserve the right to vary the specifications or performance criteria of the Goods from time to time and to obtain Goods from different sources, at our absolute discretion. When purchasing or hiring Goods

we will advise you of the updated specifications and performance criteria of those Goods and you must satisfy yourself of their suitability for your requirements and purposes.

- 3.17 **Insurance.** You must maintain at your own expense during the Hire Period all appropriate policies of insurance to insure the Goods. You must produce on request appropriate evidence of insurance (including, but not limited to, insurance for fire, damage and theft) before the date of delivery of the Goods to you. If you do not produce adequate evidence of insurance, we will insure the Goods on your behalf and invoice you in accordance with clause 9 for the insurance fees.
- 3.18 **Obligations for Hired Goods.** Throughout the Hire Period, you must:
- (a) keep the hired Goods in proper working order and condition, arranging at your cost, the re-testing and re-tagging of the hired Goods in accordance with the manufacturer's instructions and any applicable standards (including but not limited to AS/NZS 3760);
  - (b) store the hired Goods safely, securely and protected from theft, seizure, loss or damage;
  - (c) not alter, tamper, damage or repair the hired Goods without our written consent;
  - (d) not remove any label, identifying mark or safety instruction from the hired Goods;
  - (e) not remove the hired Goods from the location described in any agreement;
  - (f) allow us (or our nominated person) at any time during the Hire Period, to enter the premises where the hired Goods are stored to inspect and service the hired Goods; and,
  - (g) notify us immediately if there is any loss or damage.
- 3.19 **Risk.** Risk in Goods (other than Ordered Stock) sold and or hired passes to you on delivery to, or collection by, you (whichever is earlier). Risk in Ordered Stock passes to you when the Ordered Stock is placed by us in storage for you.
- 3.20 If you fail to take possession of the Goods within 7 days of being notified that the Goods are ready for delivery or collection:
- (a) risk in those Goods (if it hasn't already passed) passes to you at the end of the 7 day period;
  - (b) you must pay for the Goods in accordance with these terms; and,
  - (c) unless otherwise agreed by us in writing, you will indemnify us against all loss and expenses incurred by us, including any additional transport and storage charges, as a result.
- 3.21 **Title to Goods** (other than Ordered Stock) sold remains with us until the Purchase Price as well as any other amounts payable to us on any other account held by you are paid. Until such payment is received, you hold the sold Goods as bailee for us.
- 3.22 **Title in Ordered Stock** passes to you when the Ordered Stock is placed by us in storage for you. We hold Ordered Stock as bailee for you.
- 3.23 **Title to Hired Goods** remains with us at all times and you agree you hold the hired Goods as bailee for us.
- 3.24 Should we seek to recover the Goods, you authorise us to enter your premises to facilitate recovery of the Goods and you indemnify us for any damage caused to the Goods.
- 3.25 If you sell the Goods:
- (a) in the case of Goods sold to you, without payment of the Purchase Price and any other amounts payable to us by you; or
  - (b) in the case of hired Goods, without our express written consent,
- then you will hold the proceeds of sale on trust for us. If the proceeds of sale do not cover the Purchase Price, remaining Hire Charges or any other amounts due and payable by you to us (as applicable), we may recover the difference as a debt due by you to us.
- 3.26 **Repair and Replacement.** If in accordance with clause 10, we agree to repair or replace the Goods, the following apply:
- (a) We will endeavour to ensure reasonable availability of spare parts (if applicable) for any Goods manufactured by us for at least 5 years from the date of first supply to you. We will not be liable whatsoever if we are unable to supply the same Goods and make no representation or warranty in this respect.
  - (b) We own any parts removed from Goods we repair or replace and we will not return these to you. You further acknowledge that we may use replacement parts that may not be exactly the same as the originals in repairing the Goods, and we may instead use reconditioned parts rather than new parts, as replacements.
  - (c) You must allow us to take the Goods away to our workshop, if reasonably required, so we can carry out any maintenance or warranty repairs.

#### 4. LABEL AND PRINTED GOODS TERMS

The following additional terms apply in relation to the supply of Printed Goods by us to you:

- 4.1 **General.** These Terms form the basis on which we provide quotations to you in respect of Printed Goods, and supply and sell Printed Goods, to you. Each such quotation and supply and sale shall be effected pursuant to these Terms (unless in any specific case agreed otherwise in writing). Any quotation, invoice or other document evidencing or describing any Printed Goods is incorporated into, and forms part of, the contract of supply with you. We are under no obligations to supply you with samples of the Printed Goods. However, if we provide Physical samples, these will be provided on your request at an additional fee.
- 4.2 **Quotations.** A quotation only remains valid for 30 days from the date it is given. Any quotation may be withdrawn by us at any time prior to your acceptance, by notice to you.
- 4.3 Where art or design is supplied you, all quotations are based on this copy being completed to our specification. Any additional work required to obtain copy to our specification will be paid for by you.
- 4.4 Our quotations will be deemed to interpret your written and verbal instructions. You are requested to carefully check and approve all quotations before any further work proceeds.
- 4.5 A quotation does not give rise to a binding contract in respect of the relevant Printed Goods until you place a written order and that order is accepted by us in writing.
- 4.6 **Cancellation and Suspension.** You are bound to pay the price from the time that an order is placed with us. No order may be cancelled without our prior written approval, and then only upon such terms as we may specify in writing (acting reasonably).
- 4.7 The suspension of any work for a period of 30 days or more by you will entitle us to immediate payment in full of the portion of the work completed.
- 4.8 We may impose a credit limit at any time for future orders, which may be altered at our discretion with effect from the date that we notify you of such alteration.
- 4.9 **Variations.** You acknowledge that while we will make every reasonable endeavour to produce the exact quantity of Printed Goods as specified in the quotation (or any other document), owing to production practicalities the quantity actually produced may be 10% over or under the quantity specified in an estimate or an order made by you. Where more than a 10% variance occurs, we will adjust the Purchase Price pro rata to reflect the actual quantity produced.
- 4.10 All quotations are based on original specifications. Any additional costs associated with any variation or alteration to these specifications will be paid for by you at current rates.
- 4.11 There is no guarantee that production prints exactly match colour proofs because of variations in proof preparation methods and substrates. However, we will use all reasonable endeavours to provide a commercially acceptable finished product.
- 4.12 It is your responsibility to undertake a final proof reading of the specification sheet, digital samples or proofs, and Printed Goods. We will be under no liability for any errors not corrected by you in the final proof reading, and should your alterations require additional proofs, an additional fee will be charged to you. We will not be liable in any way whatsoever (including negligence) for errors or omissions arising from an oversight or misinterpretation of your verbal instructions, or where a proof has been submitted to and approved by you.
- 4.13 **Rights Retained By Customer.** Where you have been separately invoiced for the cost of design, origination, platemaking, positive or negative film, blocks or other such work, you will retain all rights in such materials free of any security interest to us.
- 4.14 **Customer Property.** Any property of yours, which is held by us, is at your risk. We will use all reasonable endeavours to produce good results from the use of materials or equipment supplied by you. However, we do not accept responsibility for sub-standard work caused by defects in or the unsuitability of any materials or equipment supplied by you. Any change or correction necessary to supply properly finished work will be paid for by you. Where you supply materials or equipment, adequate supplies must be furnished to cover spoilage.
- 4.15 We may dispose of any property of yours, which we are still holding, after the first anniversary of the date of the relevant invoice. All proceeds arising from such disposal may be used by us to offset the cost of storage and sale and any other moneys owing to us. The balance will be refunded to you.
- 4.16 **Electronic Images / Files.** We are not responsible for any accidental damage to any images or files which you supply to us and you will be deemed to have retained a copy of such images / files.
- 4.17 Unless otherwise agreed with you, you have no right or title to material stored by us in any electronic form of storage.
- 4.18 If we agree to duplicate or transfer stored electronic material to you, we will have the right to charge for such service.
- 4.19 **Claims In Respect Of Goods.** To the extent permitted by law, if Printed Goods supplied by us are damaged or defective or if you make any other claim in respect of the Printed Goods and/ or services supplied by us, then we may (at our sole discretion) repair or replace the Printed Goods and/ or services or refund the price of the Printed Goods and/ or services provided that:
- (a) all claims must be reported to us within 48 hours of delivery of the relevant Printed Goods and/ or provision of the services; and

- (b) all claims must be fully documented giving details of the alleged damage or defect in the Printed Goods and/ or services (as applicable).
- 4.20 **Intellectual Property Infringement.** You warrant that the use by us of any design, or instructions supplied by you will not infringe any intellectual property of any other person and you will be liable to us against any claim relating to or arising from the infringement of any intellectual property of any other person.
- 4.21 **Illegal/Libellous Matter.** We are not obliged to print any illegal or libellous matter and you will be liable to us against any claim relating to or arising from the printing of such matter from any third party
- 4.22 **Copy.** You warrant that all Copy supplied to us to be used for the supply of the Printed Goods:
- (a) will be true and correct in every particular;
  - (b) will not violate or infringe the rights of others (including their privacy and Intellectual Property Rights);
  - (c) is not unlawful, threatening, abusive, defamatory, invasive of privacy, vulgar, obscene, profane or which may harass or cause distress or inconvenience to, or incite hatred of, any person;
  - (d) will not encourage conduct that would constitute a criminal offence, give rise to civil liability or otherwise violate any law; and,
  - (e) will not breach any standards, content requirements or codes promulgated by any relevant authority, including authorities that require us to take remedial action under any applicable industry code.
- 4.23 We reserve the right to refuse to accept any Copy submitted by you that does not comply with clause 4.22.
- 4.24 **Defects.** You must inspect the Printed Goods on delivery and must within seven (7) days of delivery notify us in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. You must notify any other alleged defect in the Printed Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification you must allow us to inspect the Printed Goods.
- 4.25 Subject to clause 10, returns will only be accepted provided that:
- (a) you have complied with the provisions of clause 4.24;
  - (b) we have agreed that the Printed Goods are defective and may be returned;
  - (c) the Printed Goods are returned within a reasonable time or if required by us, the Printed Goods are returned to us within 21 days of the discovery of the defect; and,
  - (d) the Printed Goods are returned in as close a condition to that in which they were delivered as is possible.
- 4.26 Subject to clause 10, we will not be liable for any defect or damage to Printed Goods which may be caused or partly caused by or arise as a result of:
- (a) you failing to properly maintain or store any Printed Goods;
  - (b) wilful damage, negligence, incorrect storage or application, incorrect use, movement, installation or assembly (except by us) or defects caused by fair wear and tear;
  - (c) you continuing the use of any Printed Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user; or,
  - (d) you failing to follow any instructions or guidelines provided by us.
- 4.27 **Intellectual Property Rights.** Unless the parties agree otherwise in writing, all drawings, sketches, paintings, photographs, designs, typesetting, dummies, models, negatives, positives, blocks, engravings, stencils, dies, plates or cylinders, electros, stereos, disks, tapes, compact discs or any other media and other material produced by us in the course of or in preparation for supplying the Printed Goods (whether or not in fact used for the purposes of supplying the Printed Goods) are our property.
- 4.28 The Intellectual Property Rights in all artistic and literary works authored by us remain our property.
- 4.29 You warrant that you hold all rights (including Intellectual Property Rights) and expressly authorise us to reproduce all artistic or literary works supplied by you to us for the purposes of supplying the Printed Goods.
- 4.30 You warrant that our use of any designs, artistic or literary works, or instructions supplied by you will not infringe the rights (including Intellectual Property Rights) of any other person and you indemnify us against all liability, losses, claims or expenses incurred by us in relation to or in any way directly or indirectly connected with to or arising from the infringement of any rights (including any Intellectual Property Rights) of any other person.
- 4.31 We are not obliged to print any Printed Goods which would not comply with clause 4.22 and you agree to indemnify us against any claim relating to or arising from the printing of such matter.

## 5. SAAS SERVICES

If you order any SaaS Services from us, this clause will apply to our provision and your use of those SaaS Services.

- 5.1 **Right to use the SaaS Services.** Subject to your continued payment of the relevant subscription fees for the SaaS Services (as set out in each Schedule), we grant you a limited, non-exclusive, non-transferable, revocable right to access and use the SaaS Services for your internal business operations, on the Terms set out in this document.
- 5.2 **Access Credentials.** We will provide your chosen individual with a username and password (**Administrator**), which will enable that Administrator to access and use the SaaS Services on your behalf. The Administrator must select his or her own username and password at the time of first use of the SaaS Services. You can replace the Administrator through your account with the SaaS Services.
- 5.3 The SaaS Services allow your Administrator to invite other persons to access and use the SaaS Services under your customer account (**Authorised User**). The Administrator inviting another person to use your customer account will constitute authorisation of that other person by you to use your account. A username, linked to your account, will be created for each new or additional Authorised User and provided directly to each Authorised User. Each Authorised User must select his or her own username and use a default password at the time of first use of the SaaS Services. The Authorised User may then select his or her own password.
- 5.4 You must:
- (a) ensure that the Administrator and each Authorised User keeps his or her username and password confidential and does not disclose it to any other person (and to improve the security of their account, amends his or her password from time to time);
  - (b) ensure that you can identify and manage each Authorised User entrusted with a username and password combination for your customer account;
  - (c) refrain from authorising anyone to use your customer account who is not either employed by you or under contract with you to perform functions similar to those commonly performed by employees;
  - (d) notify us of the names of each Authorised User if requested by us; and,
  - (e) immediately notify us of any unauthorised use of your password or account or any other breach of security.
- 5.5 You are responsible for:
- (a) authorising any person who is given access to the SaaS Services using your customer account and to the Data and any Outputs;
  - (b) all activities that occur under your account, including all fees and charges in connection with that use; and,
  - (c) providing, installing and maintaining at your own expense, including data charges associated with your use of Devices, all equipment and facilities necessary to enable you to use the SaaS Services.
  - (d) You agree that we have no obligation to provide any person access to the SaaS Services through your customer account or to the Data without your authorisation.
- 5.6 Your use of the SaaS Services. You must ensure that your access and use of the SaaS Services is not illegal or prohibited by laws that apply to you. You must not, nor cause or permit a third party to:
- (a) use the SaaS Services in a manner or for a purpose which is improper, immoral or fraudulent, which infringes any person's Intellectual Property Rights, or which restricts or interferes with our provision of the SaaS Services to any other customers or users;
  - (b) reverse engineer, reverse assemble or reverse compile or copy or duplicate or modify or make derivative works of or re-sell all or part of the SaaS Services (or any of our Intellectual Property Rights in the SaaS Services),
  - (c) enter into any transaction relating to:
    - (i) access or use of the SaaS Services
    - (ii) any part of your customer account information or access credentials; or,
    - (iii) any of our Intellectual Property Rights in the SaaS Services,with anyone other than us, without our written consent;
  - (d) gain or attempt to gain unauthorised access to the SaaS Services, computer systems or networks connected to the SaaS Services, including through hacking, password mining or any other means; or,
  - (e) use data mining, robots, screen scraping or similar data gathering and extraction tools on the SaaS Services for establishing, maintaining, advancing or reproducing information contained in the SaaS Services, on your own website or in any other publication, or for your own personal use or benefit (other than as expressly set out in these Terms of use), except with our prior written consent.
- 5.7 You indemnify, and will defend and hold us and our affiliates, representatives, successors and assigns, including their applicable officers, directors, employees and agents, harmless in relation to any loss, claim or damage in connection with any claim by a third party related to your Data, the Customer Supplied Data, your content or any of your users' use of the SaaS Services where such use is not authorised by these Terms.

- 5.8 **Data** Subject to clauses 5.13 and 5.14, the Data collected, and any Outputs generated belong to you.
- 5.9 You are responsible for any Customer Supplied Data and where any Customer Supplied Data includes any Personal Information (as that term is defined in the Privacy Act 2020), you must ensure that processing of any Customer Supplied Data conducted according to your instructions will not place us in breach of any laws (including applicable data protection or privacy laws).
- 5.10 You warrant that:
- (a) you have obtained all consents necessary to collect, store, disclose, use and transfer any Customer Supplied Data, including any Personal Information included in it;
  - (b) the Customer Supplied Data will:
    - (i) not violate or infringe the rights (including Intellectual Property Rights) of any other person;
    - (ii) not contain a virus or other harmful component; and,
    - (iii) comply with any guidelines we notify to you from time to time on our website.
- 5.11 You are responsible for and must adopt reasonable measures to limit your exposure to the potential loss and damage of the Data, including downloading and backing up Data and Outputs. We expressly exclude liability for any loss of Data and Outputs no matter how caused.
- 5.12 You acknowledge the SaaS Services are dependent on the quality and amount of Data received from the Devices and may not function properly or provide Outputs if the Data obtained or any Customer Supplied Data is not of a quality or condition suitable for processing based on our applicable standards, specifications and procedures or is otherwise not in the format we require.
- 5.13 You acknowledge that we may use the Data and information derived from the Data to produce a compilation of aggregated data and information for use in enhancing the functionality of the SaaS Services. We will ensure that any Personal Information disclosed by you to us cannot be ascertained from the aggregated data and information.
- 5.14 You agree that we may, at our sole discretion, disclose, transfer and store the Data, including Personal Information, to or with our third-party service providers and affiliates outside New Zealand for the purpose of providing the SaaS Services or any part of it. The jurisdictions in which those Data transfers may occur are included in our Privacy Policy available at [www.wedderburn.co.nz](http://www.wedderburn.co.nz). You consent to us providing Personal Information to those third-party service providers and affiliates in those jurisdictions and (before submitting any Customer Supplied Data to us) are solely responsible for ensuring that any disclosure, transfer or storage of Customer Supplied Data, including Personal Information, across a country border under this document complies with applicable privacy laws.
- 5.15 **Viruses.** You must take your own precautions to ensure that the process which you use for accessing the SaaS Services does not expose you to the risk of viruses, malicious computer code or other forms of interference which may damage your own computer system.
- 5.16 We do not accept responsibility for any interference or damage to your own computer system which arises in connection with your use of the SaaS Services or any linked website or service.
- 5.17 **Service Availability.** We intend to use reasonable endeavours to make the SaaS Services available for your use 24 hours a day, seven days a week. However, you agree that service continuity is not assured and that the SaaS Services are provided on an 'as is' basis. In particular, you agree that on occasions the SaaS Services may be unavailable or have limited availability including:
- (a) to permit routine or emergency maintenance to take place;
  - (b) to permit upgrades or other development activity to take place;
  - (c) due to technical malfunctions of Customer's software, equipment or infrastructure (e.g. telecommunications connectivity, network congestion or delays);
  - (d) due to a Force Majeure event; or
  - (e) for reasons of public safety, security of the Solution, interoperability of services, data protection or to perform work that is necessary for operational or technical reasons.
- 5.18 **Disclaimer.** We make no representation or warranty:
- (a) that your use of the SaaS Services or any Outputs will be error-free, uninterrupted or compatible with your equipment, devices and software configurations;
  - (b) that the SaaS Services or any Outputs will be fit for your purposes; or
  - (c) that your use of the SaaS Services or any Outputs will improve the financial performance or profitability of your business or any other party.
- 5.19 You agree that:
- (a) the provision of, access to, and use of, the SaaS Services or any Outputs is on an **as is** basis and at your own risk;

- (b) among other things, the operation and availability of the systems used for accessing the SaaS Services, including telecommunication services, computer networks and the Internet, can be unpredictable and may from time to time interfere with or prevent access to the SaaS Services. We are not in any way responsible for any interference or prevention of your access or use of the SaaS Services caused by these types of things;
  - (c) it is your sole responsibility to determine that the SaaS Services or any Outputs meets the needs of your business and is suitable for the purposes for which it is used; and
  - (d) you remain solely responsible for complying with all applicable laws in connection with your access and use of the SaaS Services or any Outputs.
- 5.20 We may without notice suspend your access to the SaaS Services if:
- (a) you (or your Administrators or any of your Authorised Users) breach these Terms; or
  - (b) we reasonably believe that your access and use of the SaaS Services will cause technical incapacity to the SaaS Services which will continue unless access or use is suspended.
- 5.21 We will act promptly to restore access when we are satisfied that the reason for suspension has been removed.
- 5.22 If within 30 days of suspension under clause 5.20 we are not reasonably satisfied that the reason for suspension has been removed, we may terminate your subscription to the SaaS Services upon written notice.

## 6. SERVICE PLANS

The following additional terms apply where you have a service plan with us (**Service Plan**) for equipment / machinery (machines). We agree to provide to you either a periodic service or breakdown service, depending on the plan you have chosen.

- 6.1 **Periodic service.** This provision applies only where you have chosen periodic service. At each periodic service we must carry out the following services on all machines listed in the Service Plan:
- (a) inspection and testing the machines with certified test weights;
  - (b) making adjustments to the machines to maintain the accuracy of the machines to conform to the standards normal for those machines; and
  - (c) perform preventative maintenance on the machines such as cleaning and lubricating vital operating parts or such other requirements, in accordance with our usual procedures.

The service period intervals are as specified in the Service Plan.

- 6.2 **Breakdown service.** This provision applies where you have chosen breakdown service. Within a reasonable time of a request from you we must provide remedial maintenance for any machine listed in the Service Plan which is not performing to the standards normal for such a machine because of a latent or patent fault in the machine and not an external cause. We provide service from 8am to 5pm Monday to Friday excluding local public holidays, unless some other period is stated in the Service Plan.
- 6.3 **Limits.** Our services do not include repairing damage caused by external factors such as, but not limited to, abuse, misuse, negligence or mis-operation by an operator, the customer or a third party or due to fire, water, theft, vandalism, accident or corrosive or injurious environment or where a machine has been repaired or interfered with by a person not authorised by us or if the machine is removed outside your premises at the address noted in the Service Plan. Without limiting those general words, that means we are entitled to make our usual charges if we are called out for a problem due to any such external factor or in those circumstances.
- 6.4 **Composite machines.** If a machine constitutes a part of an automatic packing machine or some other composite machine, our service obligations only extend to the servicing of the scale section of that machine, unless stated otherwise in the Service Plan.
- 6.5 **Periodic verification.** Periodic verification of machines may be required by a relevant authority. We may endeavour to arrange such periodic verification but we are not liable for any refusal or omission to arrange for such a verification. You must pay or reimburse us for any cost incurred in respect of such a periodic verification or any similar certification.
- 6.6 **Consumable supplies.** Consumable supplies (such as, but not limited to, paper and labels, printing dies, rubber components, ink and glass rollers, power cords and lamps) are not included. You must pay for them.
- 6.7 **Replacement parts.** We become the owner of parts that we replace. Replacement parts may not be the same as the originals. We may use reconditioned parts rather than new parts, as replacements.
- 6.8 **Service for accessories.** We are not obliged to provide service in connection with any accessory item, unless it is listed in the Service Plan as being covered for service.
- 6.9 **Payment of our fees.** All our Service Plans have renewal dates. The initial Service Plan fee is due immediately and the plan automatically renews on payment of renewal fees at our then ruling rates, prior to the start of the next term.
- 6.10 **Commencement and Termination.** The Service Plan commences on the date that we first deliver the machines to you or, if some later date is specified in the Service Plan, then the Service Plan commences on that later date. If there are multiple machines which are delivered on different days, then in the case of any uncertainty the Service Plan is regarded

as having commenced on the day on which we delivered the first of those items. Either of us may give a notice to the other which terminates the Service Plan and takes effect at the end of the current Service Plan year, but the notice must be given at least fourteen days before the end of that year.

- 6.11 **Assignment.** You may not assign the benefit of the Service Plan without our prior written consent which may not be unreasonably withheld. We may assign our interest in, or our rights under, the Service Plan.
- 6.12 **Workshop repairs.** You must allow us to take the machines away to our workshop, if that is reasonably required, so we can carry out any maintenance under the Service Plan.
- 6.13 **Overhauls.** In some cases, with older machines, we may not agree to automatic renewal of a Service Plan unless you first allow us to give the machines a workshop overhaul at your cost.
- 6.14 **No guarantee of uninterrupted service.** No Service Plan can guarantee uninterrupted service from machines.

## 7. SERVICES

- 7.1 In connection with any sale or hire of Goods or separately, we may agree to provide the Services to you. If the Services include storage of your stock, you must comply with these Terms and the Terms in the relevant stock holding agreement or call off contract.
- 7.2 We are not obliged to provide services in connection with any accessory item, unless there is an agreement to do so. If a Good constitutes part of a total system, our service obligations only extend to the servicing of that Good and not the entire system, unless agreed otherwise.
- 7.3 No Services provided can guarantee uninterrupted use of the Goods.
- 7.4 You must maintain at your own expense during the service period all appropriate policies of insurance.

## 8. SOFTWARE LICENCE

- 8.1 If you order from us, or we provide you with, any software, such as but not limited to Wedge, Atria Wedge, SAMLite or Atria Lite software (Software), this clause will apply to your use of that Software.
- 8.2 **Grant of licence.** We grant to you a limited, non-exclusive, non-transferable, revocable licence to Use the Software for the purpose of enabling you to use and enjoy the benefit of the Software, or the Goods on which the Software is originally installed, as permitted in these Terms (Purpose).
- 8.3 In consideration of the grant of the licence under clause 8.2, you agree to pay the applicable licence fee to us on the Commencement Date and, if you upgrade the Software, the relevant fee for the upgrade.
- 8.4 You must not sub-licence or make copies of the Software without our prior written consent and then only if the sub- licensee or recipient of copies acknowledges our rights to the Software and confirms its acceptance of the provisions of this document in writing. If consent to a sub-licence is given by us, you will be liable to us for any acts or omissions of any sub- licensee as if they were your acts or omissions.
- 8.5 **Use of Software.** One registered copy of the Software may be installed on a single device or Good. You may only use the Software for the Purpose unless we agree in writing to another use. You must not allow any third party to use the Software. We license the Software 'as is' and do not warrant that the Software will be free of errors or capable of being operated continuously without interruption.
- 8.6 **Intellectual Property Rights.** You acknowledge that:
  - (a) we and our licensors are the sole and exclusive owners of all Intellectual Property Rights in the Software and any documentation relating to the Software; and,
  - (b) nothing in this document conveys to you those Intellectual Property Rights.
- 8.7 You must not decompile, disassemble, reverse engineer, modify, enhance or alter the whole or any part of the Software.
- 8.8 You must:
  - (a) notify us immediately in writing if you become aware of any infringement of the Intellectual Property Rights in the Software or of any allegation or Claim concerning the Intellectual Property Rights in the Software; and,
  - (b) provide us with all reasonable assistance to prosecute any infringement or defend any such allegation or Claim.
- 8.9 **Disclaimer.** We disclaim any liability for any omissions, changes, or errors and reserve the right to make changes and improvements to the Software. You agree that the provision of, access to, and use of, the Software is on an 'as is' basis and at your own risk.

## 9. FEES, PAYMENTS AND CREDITS

- 9.1 **Time for payment.** Unless we agree in writing to give you credit, you must pay for all orders on delivery. Ecommerce transactions must be paid for on placement of the order at checkout.

- 9.2 **Withdrawal of future credit.** At our discretion, we may decline to give you further credit at any time (by notice to you). If we do decline to give you further credit then that decision does not affect the credit terms which apply to any amounts you then owe to us.
- 9.3 Within seven (7) days of the end of each month, we will submit to you a tax invoice including the following information:
- (a) if any Goods were purchased and delivered during that previous month but not paid for in accordance with clause 13, the Purchase Price for those Goods;
  - (b) if any Goods were hired during that previous month, the applicable Hire Charges;
  - (c) if Services were provided during that previous month, the days and hours spent providing the Services and the hourly rate charged;
  - (d) any Costs or Storage Fees (if applicable); and
  - (e) the total invoice cost and GST.
- 9.4 For Ordered Stock, we will submit to you a tax invoice after the dispatch of any Ordered Stock to you, and upon expiry or termination of the stock holding agreement or call off contract for the balance of any Ordered Stock in our possession.
- 9.5 You will pay all invoices issued by us within thirty (30) days of date of invoice to an account nominated by us.
- 9.6 **Overdue payments.** If any amount you owe to us is not paid within 7 days of the due date then all of the monies that you owe us on any account become immediately due and payable; and without limiting our other rights we may suspend the supply of service and defer or cancel any outstanding orders. If you do not pay an invoice by the due date, a late payment fee equivalent to 2% above the prime overdraft rate charged from time to time by the Bank of New Zealand, calculated and payable daily, may be imposed. In addition, without limiting any right contained below, you will be liable to us for all expenses incurred by us in recovering any amounts which you fail to pay by the due date (including any commission payable to any commercial or mercantile agents and our legal costs relating to the recovery of any amounts owing).
- 9.7 **Prices and price variations.** We may increase any agreed sale price after we accept an order, to cover the full amount of any increases in indirect taxes and duties such as sales taxes, GST, which we incur in connection with a related transaction after the date of your order. We may also impose a charge for accepting payments by credit card. We may set off against any credit owed by us to you any amount owing by you to us. We will notify you of any such change at least 30 days before the change comes into force. If any change in price occurs which disadvantages you, you may terminate these Terms according to clause 13, without any liability to us for our costs incurred. You must notify us in writing with 5 days of receiving notice from us if you intend to terminate the agreement under these Terms. These Terms will continue to apply to all orders which you have placed with us at the time of any termination notice.

## 10. WARRANTIES AND LIMITATIONS

- 10.1 Consumer Guarantees Act, Fair Trading Act. You acknowledge that:
- (a) you are in trade with us and the goods and services which we provide, are being acquired or hired by you in trade;
  - (b) the provisions of the Consumer Guarantees Act 1993 (in its entirety) and the Fair Trading Act 1986 (being sections 9, 12A and 13) are expressly contracted out of; and
  - (c) the contracting out provided for in clause 10.1(b) is fair and reasonable and that you will be bound by this.
- 10.2 **Our Warranty – Goods.** We must, at our option, repair or replace any new good sold by us if there is any manufacturing defect in material or workmanship - in the case of wrapping machines, high speed weigh/labelling machines and automated packaging equipment, within 6 months of delivery, and in all other cases, within 1 year of delivery. We must repair or replace any second-hand or demonstration good sold by us if there is any manufacturing defect in material or workmanship within 3 months of delivery.
- 10.3 **Our Warranty – Services.** We must, at our option, supply the services again; or the pay of the cost of having the services supplied again by a third party, if there is any defect in services provided by us.
- 10.4 **Important Exclusions.** The warranty provided in clauses 10.2 and 10.3 does not cover: anything not specifically listed in Our Warranty provided in clauses 10.2 and 10.3; in transit damage; failure to comply with the original supplier or manufacturer warranty; wilful abuse or misuse; general wear and tear. Our Warranty is voided and does not cover any damage caused by the use of other than genuine original manufacturer's parts and consumables. Except as listed in clauses 10.2 and 10.3, this warranty does not cover any goods sold 'as is' or used in breach of manufacturer warranty, any damage from cleaning or repair by anyone without written authorisation from us, any damage caused by goods not used according to their instructions, consequential damage or incidental damages, personal injury, lost profits, lost savings or other economic damages, loss of use of the goods, rental or hire use, damage from prolonged exposure to fire or heat, damage from fraud, intentional acts, war, hostilities, terrorism or vandalism or acts of God.
- 10.5 **Suppliers' Warranties.** We must use our reasonable endeavours to assist you to obtain the benefit of any guarantee or warranty offered by the original supplier or manufacturer of any goods that we supply to you.
- 10.6 **Sale by specification.** We sell our goods by specification. You decide what purpose to use them for or to re-supply them for. Further, unless specifically stated in writing on the quotation, we take no responsibility for labels or artwork or the

appropriateness of the content contained therein on an item by item basis or otherwise; nutritional information contained on the label or completeness of same; checking the accuracy and content of the good's descriptions, pricing or weights; accuracy of weights; or for barcodes or other descriptors.

- 10.7 **Unexpected delay.** This clause applies if something happens which is beyond our reasonable control which makes it impossible, more difficult or more expensive for us to perform our obligations in our usual way. In those cases we may wait until it is again possible for us to perform our obligations in our usual way without additional difficulty or expense and we are not liable for any delay which results. If delay or failure to deliver is caused by force majeure or labour dispute we may suspend delivery, supply or completion and/or terminate the contract and refund any monies paid by you. Force Majeure means an act of God, war, lightning, fire, earthquake, storm, flood, explosion, unavailability or delay in availability of goods materials or transport, and any other cause, whether of the kind specifically enumerated or otherwise which is not within our control. Whilst we shall use reasonable endeavours to comply with your particular delivery requirements and order specifications, you will not be entitled to cancel the whole or part of an order by reason of our failure to comply with your delivery requirements or minor variations to the goods as a result of changes to the manufacturing processes or specifications.
- 10.8 **Estimated delivery times.** Delivery times are estimates only and we are not liable for minor delays in delivery. In this respect you agree that time is not of the essence.
- 10.9 **Exclusion of implied conditions.** The law implies various terms, conditions and warranties which might apply to our supplying goods or services to you. We exclude all of those implied terms, conditions and warranties to the fullest extent permitted by law.
- 10.10 **Liability Limitations.** Nothing in these Terms is or should be interpreted as an attempt to modify, limit or exclude any right or remedy, or any guarantee, term, condition, warranty, undertaking, inducement or representation, implied or imposed by legislation which cannot be modified, limited or excluded.
- 10.11 Notwithstanding any other provisions in these Terms, a party is not liable for any special, exemplary, punitive, incidental, indirect or other consequential damages of any kind, lost profits, lost revenue or lost savings, whether based in contract, tort (including negligence) or otherwise, which arise out of or are in any way connected with:
- (a) these Terms;
  - (b) any use of the goods or services;
  - (c) any failure or delay (including the use of or inability to use any component of the goods); or
  - (d) the performance or non-performance by either party, even if such party had been advised of the possibility of such damages
- 10.12 Notwithstanding any other provision of these Terms, subject to clause 10.14 and except for your liability in relation to the non-payment of amounts owing, to the maximum extent permitted by law, the total liability of the us and you to each other for all claims under or in relation to, these Terms or their subject matter, whether in contract, tort (including negligence), in equity, under statute, based on fundamental breach or breach of a fundamental term, or on any other basis will not in any event exceed the greater of \$50,000 or the total price of the Goods supplied to you in the 12 month period prior to the first claim arising.
- 10.13 The limitations contained in this clause 10 do not apply to:
- (a) your failure to pay amounts owed to us under these Terms;
  - (b) a party's liability for death or personal injury; or
  - (c) any third party intellectual property breaches.
- 10.14 **Indemnity for third party breaches of third party Intellectual Property Rights.** We will indemnify you against all reasonably foreseeable losses and liabilities arising out of claims asserted by any third party to the extent those losses and liabilities are caused by infringement of that third party's intellectual property rights by the goods and services when used as permitted under these Terms. We will not be liable under this clause 10.14 unless:
- (a) we are given immediate and complete control of such claim;
  - (b) you do not prejudice our defence of such claim; and
  - (c) you give us all reasonable assistance with such claim.
- 10.15 We will have the right to replace or change all or any part of the goods and services in order to avoid any infringement. The foregoing states our entire liability to you in respect of the infringement of the intellectual property rights of any third party.

## 11. DELIVERY AND RETURNS

- 11.1 Any delivery date we give you is only an estimate and delivery is deemed to take place when we deliver the Goods to the address you have nominated on the order or quotation (as applicable) or you (or your carrier) collect the Goods from us.
- 11.2 We may deliver the Goods in instalments and each instalment delivered will be invoiced and payable by you in accordance with these Terms.

- 11.3 Upon delivery, you must carefully check the Goods and quantities delivered (or returned). Any discrepancies between the Goods delivered and the quoted order or return docket must be notified to our representative within 7 days of delivery or collection.
- 11.4 All returns to, or collections from, our premises requires three (3) days written notice including the following information:
- (a) the proposed collection or return date;
  - (b) name of your representative who will be present at the return or collection or the name of the intended carrier who is going to deliver or return the Goods;
  - (c) contact telephone number; and
  - (d) quantity and nature of Goods to be collected/returned.

## 12. OWNERSHIP

- 12.1 **Personal Property Securities Act 1999 (PPSA).** You acknowledge that we may register any security interest in the goods;
- (a) these Terms create a security interest (as defined in the PPSA) in favour of us, in the goods supplied to you by us, and that the goods purchased from us remain our property until paid for in full by you;
  - (b) these Terms create a security interest (as defined in the PPSA) in favour of us, in the goods hired to you, and that title to those goods remains with us at all times;
  - (c) you shall act immediately, when we request, to do such acts and provide such information, as in our opinion, may be necessary or desirable to enable us to perfect any security interest created, or provided, by these Terms, in the goods or their proceeds, with a first ranking priority; and
  - (d) to the fullest extent permitted by law, you waive any rights that you may have now, or in the future, to receive a copy of any verification statement or other confirmation, related to any security interest created or provided by, or perfected in the manner contemplated by, these Terms.
- 12.2 In addition to the security interest created in clause 12.1, you also grant a security interest in all your present and after acquired goods as security for all moneys, now and in the future, owing by you to us.
- 12.3 You agree (to the maximum extent permitted under the PPSA) that you shall have no rights under Part 9 (Enforcement) of the PPSA.
- 12.4 You undertake to: sign any further document or provide any further information (such information to be complete, accurate, and up-to-date in all respects) which we may reasonably require in order to register a financing statement or financing change statement on the Personal Property Securities Register (PPSR); indemnify, and upon demand reimburse, us from all expenses incurred in registering a financing statement or financing change statement on the PPSR or releasing any goods charged thereby; and not register a financing change statement or a change demand without our prior written consent. Unless otherwise agreed in writing by us, you waive your right to receive a verification statement in accordance with section 148 of the PPSA.
- 12.5 **Returned Goods.** No goods may be returned to us without our prior written approval (acting reasonably) and then only upon such terms as we may reasonably require which may include inspection, re-packaging and transport costs.
- 12.6 **Trade-ins.** If we agree to purchase any item from you as a trade-in then you represent and warrant that we will become the absolute owner at the time the item is delivered to us and that you will properly maintain and service the item up to the time of delivery.
- 12.7 **Our Rights.** Our rights under these Terms are in addition to and not in substitution for our rights under other laws (including PPSA) and we may choose whether to exercise our rights under these Terms or under such other laws (or both) as we see fit.

## 13. TERMINATION

- 13.1 A party may terminate these Terms at any time by written notice to the other party, if the other party:
- (a) commits a material breach of any of its obligations under these Terms which cannot be remedied;
  - (b) commits a material breach of any of its obligations under these Terms which can be rectified and fails to do so within thirty (30) days of receiving written notice from the other party requiring rectification;
  - (c) becomes or threatens to become subject to any form of insolvency administration and that insolvency administration:
    - (i) does not give rise to a Stay; or
    - (ii) gives rise to a Stay, but a court makes an order to lift that Stay.
- 13.2 You may terminate these Terms if the terms are varied to your disadvantage. You must notify us in writing within 5 days of receiving our notice of variation, and provide us with 30 days notice of your intention to terminate.

- 13.3 The parties acknowledge a series of minor breaches may constitute a material breach.
- 13.4 If we terminate these Terms in accordance with clause 13.1 then, without prejudice to any other rights and remedies we may have:
- (a) we may immediately terminate any hire or sale of Goods or the provision of Services to you and take possession of the Goods; and
  - (b) you will compensate us for, and pay to us, all losses, damages and costs and other expenses suffered by us as a result of your breach, including any costs of recovering possession of the Goods.
- 13.5 If these Terms are terminated or expires:
- (a) we will provide you with an invoice for all Goods, Services, Hire Charges, Storage Fees and Costs (as applicable) incurred up to the effective date of termination or the date the Goods are returned (whichever is later). (Final Invoice) You must pay the Final Invoice in accordance with the payment terms set out in clause 9;
  - (b) in respect of hired Goods and at our option:
    - (i) you must, at your expense, deliver up the Goods to us at the address notified to you; or
    - (ii) you must provide us with all reasonable assistance in locating and collecting the Goods; and
    - (iii) you agree that upon reasonable notice we are entitled to enter your premises where the Goods are, or we reasonably believe the Goods are, in order to re-take possession of the Goods.
- 13.6 Either party may terminate the provision of SaaS Services at any time after the initial term of 6 months by giving the other party at least 30 days' written notice or as otherwise agreed in a Schedule.
- 13.7 Subject to clause 13.8, for a period of 30 days after termination of these Terms, we will continue to provide you with access to the SaaS Services, solely for the purposes of allowing you to extract any Data or Customer Supplied Data that you have saved in the SaaS Services, following which we will permanently delete any Data or Customer Supplied Data you have saved in the SaaS Services.
- 13.8 Clause 13.7 will not apply if we reasonably believe that your continued access and use of the SaaS Services will cause technical incapacity to the SaaS Services.
- 13.9 Termination of these Terms does not affect any accrued rights or liabilities of any party under these Terms nor does it affect any provision of these Terms which is expressly or by implication intended to operate after termination.

## 14. GENERAL CONDITIONS

- 14.1 **Software licences.** We supply any firmware or software which comes with goods, under licence only. That licence is non-exclusive but perpetual and only allows use of the particular firmware and software with the goods with which it is supplied.
- 14.2 **Variations in specifications.** We reserve the right to vary the specifications or performance criteria of any good from time to time and to obtain goods from different sources, at our absolute discretion and upon notice to you, provided we have reasonable grounds for believing that the alternative item offered is substantially similar to that previously offered or represents an improvement. You will have 5 days from receiving our notice, to raise any objections to the change in specifications. Otherwise you shall be deemed to have accepted the change in specifications notified to you. If the variation disadvantages you, you may terminate the contract in writing within 5 days from receiving our notice, without any liability to us for our costs incurred. These Terms will continue to apply to all orders which you have placed with us at the time of any termination notice.
- 14.3 **Finance company arrangements (if any).** If you wish to lease or finance the purchase of goods from us through a financier then these Terms still apply (with only the minimum changes necessary) between you and us. These Terms still regulate our rights, obligations and liabilities both to you and to the financier and you must be liable to us against any claim in connection with this order or those goods by the financier.
- 14.4 **Availability of spare parts.** We make every reasonable effort to ensure the reasonable availability of spare parts for any particular good type for at least 5 years from the first time it is or was supplied to a customer when it was new. We are not liable if, having used reasonable efforts, we are unable to do so for a temporary or permanent period. We may not be able to arrange for the availability of spare parts after the end of that 5 year period.
- 14.5 **Workshop repairs.** In the event that goods are delivered or taken to our workshop for repair, service or maintenance then all goods must be collected within 7 days of our notifying you that they are ready for collection. In the event that goods are not collected within the notice period then we reserve the right to charge you for the costs of storage and or disposal and all associated costs of the same.

## 15. GENERAL AGREEMENT TERMS

- 15.1 **Variation.** These Terms can only be varied by one of our authorised officers signing a document which states the variation, and the transaction to which the variation applies.

- 15.2 **No Set Off.** You are not entitled to set off against or deduct from the price any sums owed or claimed to be owed to you by us. We are entitled to set off against any amount we owe you, any amount you owe us.
- 15.3 **No Waiver.** The failure by us to enforce any provision of term and condition of these Terms shall not be treated as a waiver of that provision, nor shall it affect our right to subsequently enforce that provision.
- 15.4 **Non Representation.** The description, illustration and performance of any good contained in our catalogue, marketing material, price list or advertising does not form part of these Terms unless expressly agreed by us in writing. Any representation made about fitness for purpose of a good or service supplied by us is only made for general guidance only and you should fully satisfy yourself that the good will meet your requirements and will be suitable for your intended purpose.
- 15.5 **Place of Delivery.** Delivery shall be at the address nominated on the quotation as the delivery address. Ecommerce transactions will be delivered to the address you specify in the online order. In the event that a delivery address is not specified and/or in the event that you request us to store the goods, we may charge you for the same.
- 15.6 **Applicable Law.** These Terms (and each connected agreement or Schedule) are governed by the law of New Zealand.
- 15.7 **Severance.** If any provision of these Terms is determined by a court or other competent tribunal or authority to be illegal, invalid or unenforceable then:
  - (a) where the offending provision can be read down so as to give it a legal, valid and enforceable operation of a partial nature it must be read down to the extent necessary to achieve that result;
  - (b) where the offending provision cannot be read down then that provision must be severed from the Terms in which event, the remaining provisions of these Terms operate as if the severed provision had not been included; and
  - (c) the legality, validity or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction is not affected,
 but only to the extent that is consistent with giving substantial effect to the intentions of the parties under these Terms.
- 15.8 **Privacy Consent.** We collect, use, store and disclose personal information in accordance with our privacy policy, which you acknowledge having had an opportunity to read and understand. You can access the current policy from our website located at [www.wedderburn.co.nz](http://www.wedderburn.co.nz).

These Terms have been read and understood by the customer who agrees to be bound by them in relation to goods presently and after acquired from Wedderburn Scales Limited (whether they be sold or hired). In particular, Wedderburn Scales Limited takes a security interest in all your present and after acquired goods.

SIGNED by:

The Customer:.....

Name:.....

Date:.....