

Corteq Systems Limited Terms and Conditions of Trade

1 GENERAL

- 1.1 These terms and conditions of trade govern all of the supplies of products, software and services ("Goods") from Corteq Systems Limited ("Corteq", "we", "us") to the Customer ("you"). They will replace any terms and conditions contained in any document used by you and purporting to have contractual effect.
- 1.2 Any additional or different terms you stipulate or state in any communication with Corteq (including an order) are hereby objected to and will not bind Corteq unless Corteq agrees in writing. No salesperson, representative or agent is authorised by Corteq to give any guarantee, warranty, or representation in addition to, or contrary to these terms.
- 1.3 Receipt of Goods by you (or another as you direct) upon delivery constitutes your agreement to be bound by these terms.
- 1.4 In these conditions, "Software" includes all relevant documentation, manuals printed and written material; "Supplier" means Corteq's suppliers; "Goods" means computer hardware, peripherals, accessories, software, technical support, labour and other products or services of any kind which are supplied by Corteq to you primarily for use by you.

2 PRICE & PRICE VARIATION

- 2.1 Prices quoted are excluding GST unless otherwise stated. Unless otherwise agreed in writing, the price of the Goods will be the current price on the day of delivery. Prices do not include any delivery surcharges.
- 2.2 Corteq shall be entitled to adjust any price quoted from time to time and the Customer agrees to pay any such adjusted price to take account of variations in the cost to Corteq of carrying out the whole or any part of the contract arising from any of the following:
- (a) delays in delivery or installation of the Goods as a result of instructions or lack of instructions from the Customer, the Customer's failure or inability to fulfil the obligations under the contract or any action or inaction by the Customer or other circumstances beyond Corteq's control;
 - (b) variation in the cost of Corteq acquiring the Goods directly or indirectly, on account of changes in rates of freight and transport costs, insurance, customs duties, taxes, existing tariff classifications or any variation in currency exchange rates;
 - (c) variations in the cost of rates of all statutory, government or local government or governmental authority charges and obligations; or
 - (d) any correction of errors or omissions on the part of Corteq or any of its representatives.

3 GST

- 3.1 All Goods sold are subject to Goods and Services Tax.

4 PAYMENT

- 4.1 Unless Corteq has agreed to extend credit to you, payment is to be made in full before supply. Receipt of or any type of bank transfer will not be considered payment until funds have been cleared.
- 4.2 Where Corteq has agreed to extend credit to you, payment is to be made in full within:
- (a) 7 days of supply, or;
 - (b) by the 20th of the month following the date of invoice.
- 4.3 The determining factor in all cases will be the date indicated on the invoice.
- 4.4 Without a specific written agreement by Corteq to the contrary, credit terms applied to one order does not constitute a credit agreement for future or other pending orders. Corteq may allow extended credit on a case-by-case basis.
- 4.5 Corteq has sole discretion to determine the amount of credit it will extend to you at any time.
- 4.6 You agree to pay for the Goods in full without deduction or setoff and to pay Goods and Services Tax and any other government duties, levies, or taxes in respect of the Goods.
- 4.7 Payment will not be accepted by any means other than cash, direct credit or direct debit to Corteq's nominated trading account.
- 4.8 Corteq reserves the right to suspend delivery of further Goods if the terms of payment are not strictly adhered to by the Customer.
- 4.9 Interest may be charged on overdue accounts at a rate determined by Corteq from time to time.
- 4.10 Any expenses, costs or disbursements incurred by Corteq in recovering any outstanding monies including debt collection agency fees or solicitor's costs shall be paid by the Customer.

5 RISK & DELIVERY

- 5.1 You are responsible for insurance and risk in the Goods from the time they are delivered to you or your nominated agent. Where you have assumed responsibility for carriage then responsibility falls to you when the Goods are collected by you or your nominated agent.
- 5.2 You agree to pay all delivery costs.
- 5.3 All claims for shortage or damage during delivery must be made to the carrier within 7 days of the date of delivery. Where Goods appear to be damaged or missing you must contact the carrier and Corteq immediately.
- 5.4 Corteq will make every effort to ensure delivery of Goods or performance of services is on time but will not be liable for any loss or damage arising in any way from any delay in delivery or performance. Delay in delivery or performance shall not entitle you to cancel any order.
- 5.5 Where you ask us to deliver Goods directly to another person, that person takes possession of the Goods for you as your agent, but you are still directly responsible to us under these terms of trade.
- 5.6 The Customer agrees to inform Corteq within 30 days of the date of invoice if proof of delivery is required. After this period, no liability will lie with Corteq for proof of delivery.

6 PRIVACY ACT 1993

- 6.1 The Customer authorises Corteq to collect, retain, and use personal information about the Customer (including the information collected in the account application) for the following purposes only:
- (a) assessing the Customer's creditworthiness;
 - (b) disclosing to a third-party details of this application and any subsequent dealings it may have with Corteq for the purpose of recovering amounts payable by the Customer and providing credit references;

- (c) marketing Goods and services provided by Corteq to the Customer.
- 6.2 The Customer, if an individual, has a right of access to information about the Customer held by Corteq. The Customer may request correction of that information and may require that the request be stored with that information. Corteq may charge reasonable costs for providing access to that information.

7 INTELLECTUAL PROPERTY

- 7.1 All intellectual property shall remain the property of Corteq, or any Supplier entitled to it, and neither Corteq nor its Suppliers transfer any right, title, or interest in the intellectual property to you.
- 7.2 You may not register a business name incorporating the word "Corteq".
- 7.3 You agree to ensure that all confidential information, including (but not limited to) quotations, reports, written analysis, and specifications given by Corteq to you is made available to your employees only on the basis that those employees at all times maintain strict confidentiality.
- 7.4 This clause 7 shall survive the termination of the Agreement.

8 SOFTWARE LICENCES

- 8.1 The Customer agrees to abide by all terms and conditions imposed by the licences governing software and other Goods provided to it, including (but not limited to):
- (a) the Customer shall not install software on more hardware than the licence permits;
 - (b) where the Customer engages Corteq to install computers and/or software, it is the responsibility of the Customer to ensure that sufficient licences are held for the software being installed. The Customer indemnifies Corteq against any responsibility in this regard.
- 8.2 All reasonable measures will be taken by the Customer to ensure employees or other persons do not install unlicensed software onto equipment purchased from Corteq.

9 RETURN OF GOODS

- 9.1 Corteq will not accept the return of Goods for credit or any other purpose unless Corteq agrees to accept the return of the Goods in writing. Return of Goods will only be accepted for credit within 14 days of delivery, unless due to Corteq's error. Return freight will be at Corteq's cost only when there has been an error on Corteq's part.
- 9.2 No returned Goods shall be accepted by Corteq (even if Corteq agree to do so) if they have been tampered with by you or any other person and are not as new, or if they are Goods expressly sold on a non-return basis. Where Goods are returned to Corteq but not accepted as above, they shall be returned to you at your expense.
- 9.3 Receipt by Corteq or by any of our agents or representatives of any Goods returned other than in accordance with clauses 8.1 and 8.2 shall not constitute nor be deemed to constitute Corteq's acceptance of the return of the Goods for credit or any other purpose.

10 SECURITY INTEREST

- 10.1 The Goods supplied to you and secured by these terms of trade, together with the credit advanced by the supply of any services, are described on each of our invoices.
- 10.2 You agree that you will do all acts necessary and provide to Corteq on request all information required by it to register a financing statement over the Goods or their proceeds, and that you will advise Corteq of any changes to that information.
- 10.3 You agree that you will supply Corteq, within 2 business days of its written request, with copies of all security interests registered over your personal property, and you authorise Corteq as your agent to request information from any secured party relating to any security interest which is held in any personal property which is or has been in your possession or control.
- 10.4 Until the Customer has paid all money owing to Corteq the Customer shall at all times ensure that:
- (a) the Goods supplied by Corteq, while in the Customer's possession, can be readily identified and distinguished; and/or
 - (b) all Proceeds (in whatever form) that the Customer receives from the sale of any of the Goods are readily identifiable and Traceable.

11 WARRANTIES

- 11.1 Where the Goods are of a kind ordinarily acquired for personal, domestic, or household use or consumption in accordance with the Consumer Guarantees Act 1993 and the Consumer Guarantees Act 1993 applies to this contract:
- (a) if any of the Goods fail to comply with any guarantee in the Consumer Guarantees Act, Corteq will repair or replace those Goods;
 - (b) without excluding Corteq's obligations under the Consumer Guarantees Act 1993, the Customer acknowledges that Corteq does not provide any Express Guarantees (as defined in that Act) other than those expressly confirmed by Corteq in writing;
 - (c) if the Goods are acquired by the Customer for business purposes, the Customer agrees that the Consumer Guarantees Act 1993 does not apply;
 - (d) if the Customer supplies the Goods in trade to a person acquiring them for business purposes, it must be a term of the Customer's contract that the Consumer Guarantees Act 1993 does not apply in respect of the Goods; and
 - (e) if the Customer supplies the Goods to any person, the Customer must not give or make any undertaking assertion or representation in relation to the Goods without Corteq's prior approval in writing, and the Customer must give the person buying the Goods such product information relating to the Goods as Corteq requires, and the Customer agrees to indemnify Corteq against any liability or cost incurred by Corteq under the Consumer Guarantees Act 1993 as a result of any breach by the Customer of these obligations.
- 11.2 The following terms apply wherever the Consumer Guarantees Act 1993 does not apply to this contract, or where the following terms are not inconsistent with the Consumer Guarantees Act 1993:
- (a) Defective Goods or Goods which do not comply with the contract may at Corteq's discretion be repaired or replaced, or the price refunded.
 - (b) Any right which the Customer may have to reject non-conforming or defective Goods will only be effective if:

- (i) the Customer notifies Corteq in writing within fourteen days following delivery and Corteq is given the opportunity to inspect the Goods; and
 - (ii) the Goods are returned unused, re-saleable and/or in the condition the Customer received them.
- (c) Corteq will not repair or replace or refund the price of any Goods for so long as the Customer is in default in relation to any amount owing.
- (d) Corteq accepts no liability for any claim by the Customer or any other person, including without limitation any claim relating to or arising from:
- (i) Any conditions, warranties, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability or otherwise, whether express or implied by law, trade custom or otherwise; or
 - (ii) Any representations, warranties, conditions or agreement made by any agent or representative which are not expressly confirmed by Corteq in writing; or
 - (iii) Any services forming part of the supply of the Goods which have been performed by any third party; and the Customer agrees to indemnify Corteq against any such claim.
- (e) In any event, Corteq's liability under any claim shall not exceed the price of the Goods.
- 11.3 Where Goods are subject to a return to base warranty, you are responsible for returning them to Corteq or the manufacturer (as provided by the warranty), and you may be responsible for additional costs, including (but not limited to) freight.
- 11.4 Any warranty maybe voided by damage to or misuse of the system, problems caused by the use or misuse of software, negligent installation or operation, inadequate packaging, cleaning or maintenance (or the lack of), unauthorised repairs, modifications or the addition of incompatible hardware.
- 11.5 Corteq does not make any warranty regarding the processing, provision, receipt, or exchange of date data by any Goods, and Corteq shall not be liable to you or your customers (subject to any rights they may have under the Consumer Guarantees Act 1993 ("CGA")) for any reason whatsoever for any failure of the Products in connection with dates.
- 11.6 Nothing in these terms is intended to have the effect of contracting out of the provisions of the Consumer Guarantees Act 1993 except to the extent permitted by that Act, and these terms are to be modified to the extent necessary to give effect to that intention.

12 CUSTOMER'S LIABILITY & DEFAULT

- 12.1 If the Customer shall:
- (a) fail to make any payment due under the contract or commit any other breach of any of the Customer's obligations under the contract; or
 - (b) suffer execution under any judgment; or
 - (c) commit an act of bankruptcy; or
 - (d) make any composition or arrangement with any creditor; or
 - (e) being a company, pass a resolution for winding up or have a receiver appointed over any of its property or have a winding up petition presented against it, Corteq (in addition to any other remedies hereby or by statute conferred) may treat the contract as terminated and any part of the purchase price then unpaid, together with any other monies owing hereunder, whether or not due under the terms of the contract shall forthwith become due and payable. Any such termination shall be without prejudice to any claim or right Corteq may otherwise possess.

13 VARIATIONS TO TERMS & CONDITIONS OF TRADE

- 13.1 Corteq may from time to time and in its sole discretion amend, add to, or delete any of the terms of these terms and conditions of trade with immediate effect by giving notice to the Customer. Corteq may notify the Customer by delivering to the Customer an invoice or statement of account with these terms and conditions of trade. Receipt of the said document by the Customer will be deemed to be acceptance by the Customer of the terms and conditions of trade.
- 13.2 If Corteq fails to enforce any terms or exercise its rights under these terms of trade at any time, Corteq has not waived those rights.

14 GOVERNING LAW

- 14.1 These terms of trade are governed by the laws of New Zealand. Corteq and the Customer shall submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of these terms and conditions of trade.

CORTEQ

CORTEQ SYSTEMS LIMITED
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