

TERMS AND CONDITIONS

This Agreement is for the provision of Equipment and/or Services from Rocket POS New Zealand Limited and/or its subsidiaries.

DEFINITIONS

"Abuse" means any damage to the Equipment that is not caused by fair wear and tear and includes, but not limited to, damage caused by liquid, electricity, impact or use outside normal operating conditions;
"After hours" means all hours on public holidays and weekends and Mon to Fri 5.00pm to 8.30am ;
"Agreement" means this agreement, its Schedules and terms and conditions, any other terms and conditions specifically relating to the various Equipment and/or Services provided, and all other documents forming part of this Agreement including the Customer Services Agreement;
"Application Form" means the application form on the front page of this Agreement;
"Business Hours" means 8.30am to 5.00pm Mon to Fri, excluding weekends and public holidays;
"Commencement Date" means the date of this Agreement;
"Company", "we", "our" or "us" means Rocket POS Limited, its assignees, successors and any subcontractor engaged by, the Company to provide the Services;
"Components" or "Parts" means any component part or complete unit of the Equipment;
"Customer", "you" and "your" means the person(s) or legal entity named overleaf. If there is more than one, and/or it means each of you separately and all of you jointly and severally;
"Customer Services Agreement" means the customer services agreement entered by the Customer and the Company relating to the various Equipment and/or Services provided;
"Location" means the place the Equipment and or Service has been located and/or where the Software has been installed;
"End User" means the consumer who will purchase products and/or services from you;
"End User Service" means all Services provided to you for the use by an End User
"Equipment" means all equipment, terminals, Software and accessories provided by us to you (if any), and includes all equipment supplied in addition to or in substitution of the equipment detailed overleaf;
"expiry of contract notice period" means a period of 3 months (90 days).
"Fees" means all the sums payable to us by you under this Agreement, over the full Term;
"Guarantor(s)" means those person(s) guaranteeing the obligations of the Customer under this Agreement;
"Initial Term" means the period from the Commencement Date and running for the initial term provided for in the Customer Services Agreement;
"Renewal Term" has the meaning given to that term in the clause it is mentioned
"Return to Depot" means the Equipment returned by you to our Service Centre for repair both the cost of return and repair are at your expense as outlined in the schedule
"Service Centre" means the place from which the Service Level will be provided to you;
"Transaction Fee" means the transaction fees (other than the Minimum Weekly Transaction Fee) payable by you in terms of this Agreement;
"Minimum Hire Period" is the term stated as in the individual agreement.
"Service Level" means the definition as outlined at www.rocketpos.co.nz
"Third Party" means any organization or individual or company who delivers the Services, or parts of the Services, where these are not in our control;
"Term" means the Initial Term, plus any Renewal Terms, unless terminated earlier under clause 42..

1. EQUIPMENT OWNERSHIP AND USE

On the occasion that the company agrees to provide you with the equipment;

- 1.1 The Equipment always remains our property.
- 1.2 You only have a right to use the Equipment for the Term and no right to purchase the Equipment on or before termination of this Agreement.
- 1.3 You must protect and make clear to others our interest in the Equipment.
- 1.4 You must not give another person an interest in, or security over the Equipment to others for any reason;
- 1.5 You have acted solely on your own judgement in taking the Equipment under this Agreement;
- 1.6 You have not relied on any representation about the Equipment by or on behalf of the Company as to its suitability for any particular use;
- 1.7 You must not part with possession of or alter the Equipment in any way unless agreed by us in writing;
- 1.8 We may act in your name, or on your behalf, to take any steps to protect our interest in the Equipment;
- 1.9 The company is not responsible for the regular back up of database systems and the Goods do not automatically provide for systems backup. Systems backup is the responsibility of the Customer.
- 1.10 You must use the Equipment for the purpose for which it has been designed and in accordance with the manufacturer's instructions. Opening the cases will be considered Abuse.

2. EQUIPMENT INSTALLATION

- 2.1 We have the right to enter your premises to exercise our right under this Agreement, including removal of the Equipment;
 - 2.2 We may engage sub-contractors to provide, install, maintain and/or restore all or any of the Equipment;
 - 2.3 You must not move the Equipment to any other location without our permission in writing
 - 2.4 Replaced Components become part of the Equipment once they have been exchanged for any reason;
 - 2.5 If additional or different Equipment is provided to you, it will be on the same terms and conditions as contained in this Agreement and you must pay all additional Fees thereof;
 - 2.6 Only the Company and its authorised service agents shall be permitted to carry out any installation or removal of the Equipment which shall be completed at the Customer's costs.
- ### 3. DELIVERY
- Where this is an agreement for hire of equipment
- 3.1 The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery.
 - 3.2 If the Customer is unable to take delivery of the Goods as arranged, then Rocket POS shall be entitled to charge a reasonable fee for redelivery of the Goods and/or the storage of the Goods.
 - 3.3 Any time or date given by Rocket POS to the Customer is an estimate only.
 - 3.4 The Customer must still accept delivery of the Goods even if late and Rocket POS will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.
- Where this is an agreement for the purchase of the Goods:
- 3.5 Rocket POS and the Customer agree that ownership of the Goods shall not pass until:
 - a. the Customer has paid Rocket POS all amounts owing to Rocket POS; and
 - b. the Customer has met all its other obligations to Rocket POS.
 - 3.5.1 Receipt by Rocket POS of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
 - 3.6 It is further agreed that, until ownership of the Goods passes to the Customer:
 - a. the Customer holds the benefit of the Customer's insurance of the Goods on trust for Rocket POS and must pay to Rocket POS the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - b. the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for Rocket POS and must pay or deliver the proceeds to Rocket POS on demand.
 - c. the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Rocket POS and must sell, dispose of or return the resulting product to Rocket POS as it so directs.
 - 3.7 Rocket POS may recover possession of any Goods in transit whether delivery has occurred.
 - 3.8 Rocket POS may commence proceedings to recover the Price notwithstanding that ownership of the Goods has not passed to the Customer.
 - 3.9 If the Customer fails to return the Goods to Rocket POS then Rocket POS or Rocket POS's agent may (as the invitee of the Customer) enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Goods are situated and take possession of the Goods, without being responsible for any damage thereby caused.
- ### 4. CABLING AND INTERNET CONNECTION
- The Customer acknowledges that:
- 4.1 the installation of both power and data cabling is not the responsibility of Rocket POS, and all cabling must be completed before installation commences.
 - 4.2 If installation does occur prior to completion of cabling, then Rocket POS's hourly rate will be charged for installations which are \$100/ hour at a rate of \$1/ km,
- ### 5. ASSIGNMENT
- Customer May Not Assign:
- 5.1 The Customer may not assign or transfer all or any of its rights, benefits and obligations under this Agreement without the prior written consent of the Company, the granting of which shall be at the sole and unfettered discretion of the Company.
- Company May Assign:
- 5.2 The Company may at any time assign or otherwise transfer to any party all or any part of its right and obligations under this Agreement and in that the assignee or transferee should have the same rights against the Customer and the Guarantor as it would have had if it had been a party to this Agreement;
- Company may Assign to Financier:
- 5.3 The Company may assign this Agreement to a financier of the Company at its sole discretion.

- 5.4 Where such an assignment occurs, the Customer agrees and acknowledges that the financier shall take assignment of all rights of the Company under this Agreement, but shall not take an assignment of any of the Company's obligations or any other obligation of the Company to the Customer under this Agreement or at law.
 - 5.5 A fee is payable, in advance, to cover the administrative costs of Assigning an existing Agreement;
 - 5.6 Assignment of an Agreement is subject to the creditworthiness of the Assignee and at our discretion
 - 5.7 The Customer and the Guarantor agree that the Company may disclose to a potential assignee or to any person who may otherwise enter into contractual relations with it in relation to this Agreement, such information about either of them as the Company considers appropriate, absolutely or by way of security.
- ### 6. CHANGE IN CONTROL
- 6.1 On the event that the customers business is sold, or it closes for any reason, the customer shall still be liable for the whole of their originally signed term.
 - 6.2 The Customer shall give Rocket POS not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice).
 - 6.3 The Customer shall be liable for any loss incurred by Rocket POS as a result of the Customer's failure to comply with this clause.
 - 6.4 The customer will be liable to pay administrative costs which are \$99.00 + GST for the whole process of change in control.
 - 6.5 If the customer changes their company before the expiry date of the contract, they are still liable for the whole term of the contract
- ### 7. YOUR OBLIGATIONS
- In signing this Agreement, you acknowledge and agree:
- 7.1 That you accept that the Company will be providing a range of Services, in some cases to be delivered and/or operated on the Equipment listed overleaf or via Equipment you have provided (at exclusive option of the Company);
 - 7.2 You agree to pay all Fees (including any Transaction and/or Minimum Weekly Transaction Fees) on or before the dates specified in the Agreement for the Term of the Agreement;
 - 7.3 You must provide at your cost or purchase from us a suitable power supply and/or telephone connection and internet connection to enable the Equipment and/or End User Services to operate;
 - 7.4 To immediately call the Service Centre to log any defect, fault and/or failure with the Equipment, Services or End User Services;
 - 7.5 To allow us to have immediate access during Business Hours to install, inspect, test, repair, replace or upgrade Equipment;
 - 7.6 To not commit any Abuse of the Equipment, including attempting to modify or alter the Equipment without our consent;
 - 7.7 To pay for the repair or replacement of the Equipment if Abuse occurs, whether such Abuse is your fault or caused by you
 - 7.8 To keep the Equipment in the same good working condition as at the commencement of this Agreement excepting fair wear and tear;
 - 7.9 have the Equipment repaired and maintained in accordance with the manufacturer's instructions;
 - 7.10 To not represent that we or the Reseller will pay for any repair or maintenance work done by others;
 - 7.11 To immediately notify us of any loss, damage, or destruction to the Equipment, no matter how it occurred;
 - 7.12 To first obtain written consent of and comply with the directions of us or any Third Party relating to the use of our or the Third Party's marks, logos or advertising materials;
 - 7.13 To ensure that the Equipment:
 - a. Is Used in a careful and prudent manner and solely for the purpose intended by its manufacturer and in accordance with the manufacturer's instructions;
 - b. Is Kept in its possession and under its control at the place at which it is installed or at such other place approved by the Company;
 - c. Shall not be used in contravention of any policy of insurance relating to it; and
 - d. Is used solely for the purposes of and incidental to the Customer's business;
 - e. To ensure that every user and/or operator of the Equipment complies with all laws affecting the Equipment; and the use and possession of the Equipment;
 - f. To ensure that no user and/or operator interferes with any identification marks, labels, logos or notice on the Equipment;
 - 7.14 Not to allow the Equipment to be used or permit anything to happen to the Equipment whereby the warranties relating to the Equipment may become inoperative or be prejudicially affected.

- 8. CUSTOMER'S DISCLAIMER**
- 8.1 The Customer hereby disclaims any right to rescind, or cancel any contract with Rocket POS.
- 8.2 The customer hereby disclaims any right to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by Rocket POS.
- 8.3 The customer acknowledges that the Goods are bought/hired relying solely upon the Customer's skill and judgment.
- 8.4 The customer shall only contact the company after hours on matters that constitute as urgent, otherwise contact during the normal business hours.
- 8.5 The customer acknowledges that the Goods are bought/hired relying solely upon the Customer's skill and judgment.
- 8.6 The customer acknowledges that the terms and conditions prevail all communication made by any staff or representative of Rocket POS.
- 9. MAINTENANCE/ SUPPORT OBLIGATION OF THE COMPANY**
- 9.1 Provided all Fees have been paid, then we will provide the Service Level to you during the Term of this Agreement.
- 9.2 If you have received Equipment and a replacement Part is required, then we may use either new or refurbished Parts;
- 9.3 Telephone support will only be available during business hours unless you have entered into a separate Service Level Agreement;
- 9.4 We are not obliged to provide the Service Level if prevented from doing so by circumstances beyond our control or the control of any Third Party that provides the Service Level
- 10. DEFECTS**
- 10.1 The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify Rocket POS of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote.
- 10.2 The Customer shall afford Rocket POS an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way.
- 10.3 If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Rocket POS has agreed in writing that the Customer is entitled to reject, Rocket POS's liability is limited to either (at Rocket POS's discretion) replacing the Goods or repairing the Goods.
- 10.4 Returns of Goods will only be accepted provided that:
- a. The Customer has complied with the provisions of this agreement.
 - b. Rocket POS has agreed in writing to accept the return of the Goods; and
 - c. the Goods are returned (with the courier ticket supplied by Rocket POS) within seven (7) days of the delivery date; and
 - d. Rocket POS will not be liable for Goods which have not been stored or used in a proper manner; and
 - e. the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
 - f. The Customer is responsible to ensure that Goods for return are adequately packaged to prevent damage. Any damage caused to the terminals in transit to Rocket POS is the responsibility of the Customer.
- 11. DEFAULT AND CONSEQUENCES OF DEFAULT**
- 11.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Rocket POS's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 11.2 If the Customer owes Rocket POS any money the Customer shall indemnify Rocket POS from and against all costs and disbursements incurred by Rocket POS in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Rocket POS's collection agency costs, and bank dishonour fees).
- 11.3 Without prejudice to any other remedies Rocket POS may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Rocket POS may suspend or terminate the supply of Goods to the Customer (including disable or disconnecting the Goods).
- 11.4 Rocket POS will not be liable to the Customer for any loss or damage the Customer suffers because Rocket POS has exercised its rights under this clause
- 12. TERMS APPLICABLE TO THE HIRE OF GOODS ONLY**
- 12.1 Rocket POS retains property in the Goods nonetheless all risk for the Goods passes to the Customer on delivery.
- 12.2 The Customer accepts full responsibility for the safekeeping of the Goods and indemnifies Rocket POS for all loss, theft, or damage to the Goods howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Customer.
- 12.3 The Customer will insure, or self-insure, Rocket POS's interest in the Goods against physical loss or damage including, but not limited to, the perils of accident, fire, theft, burglary, liquid damage, flood, negligence, abuse, pest infestation, customer error, computer malfunctions, power fluctuations, phone line faults and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Goods. Further the Customer will not use the Goods nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 12.4 Hire charges shall commence from the time specified in the agreement between Rocket POS and the Customer and will continue until the return of the Goods to Rocket POS's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs. If the Goods are not returned to Rocket POS's premises at the expiration of the Minimum Hire Period, the Customer shall be responsible for additional hire charges until such time as the Goods are returned to Rocket POS.
- 12.5 Immediately on request by Rocket POS the Customer will pay:
- a. the new list price of any Goods, accessories or consumables that are for whatever reason destroyed, written off or not returned to Rocket POS; All costs of repairing any damage caused by:
 - b. wilful or negligent actions of the Customer or the Customer's employees;
 - c. vandalism, or (in Rocket POS's reasonable opinion) in any way whatsoever other than by the ordinary use of the Goods by the Customer;
 - d. the cost of consumables provided by Rocket POS and used by the Customer;
 - e. any lost hire fees Rocket POS would have otherwise been entitled to for the Goods, under this, or any other hire agreement;
 - f. Any insurance excess payable in relation to any damage caused by, or to, the hire of Goods will first be charged to the Customer's insurers.
- 12.6 Full payment for any loss or damage to hired Goods is the responsibility of the Customer, irrespective of whether the Customer's insurance company has accepted and/or settled the Customer's insurance claim.
- 13. SHORT TERM HIRE**
- 13.1 If customer does not return the equipment to Rocket POS premises and/or until the expiry of the minimum hire period, the customer shall be responsible for additional hire charges until such time as the goods are returned to Rocket POS.
- 13.2 Any rental that is less than six months will be considered as a short-term rental.
- 13.3 If the short-term hire period exceeds 7 days, then the invoice of the total market value of gears will be sent to the client.
- 13.4 If the customer does not pay within 7 days, then Rocket POS will give the matter to debt collection for the full market value of gear.
- 13.5 The full market value of the gear will be stated on the rental agreement that is provided to the client and is calculated based on the type of machine and their market value.
- 14. TERMS AND CONDITIONS APPLICABLE TO THE SALE OF GOODS ONLY**
- 14.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 14.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Rocket POS is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Rocket POS is enough evidence of Rocket POS's rights to receive the insurance proceeds without the need for any person dealing with Rocket POS to make further enquiries.
- 14.3 If the Customer requests Rocket POS to leave Goods outside Rocket POS's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Customer's sole risk.
- 14.4 Returned goods may (at Rocket POS's sole discretion), incur 25% restocking and handling fees.
- 14.5 Non-stocklist items or Goods made to the Customer's specifications are under no circumstances acceptable for credit or return.
- 14.6 Subject to the conditions of warranty in this agreement Rocket POS warrants that if any defect in any workmanship of Rocket POS becomes apparent and is reported to Rocket POS within twelve (12) months of the date of delivery (time being of the essence) then Rocket POS will either (at Rocket POS's sole discretion) replace or remedy the workmanship.
- 14.7 the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
- a. Failure on the part of the Customer to properly maintain any Goods; or
- b. Failure on the part of the Customer to follow any instructions or guidelines provided by Rocket POS; or
- c. Any Use of any Goods otherwise than for any application specified on a quote or order form; or
- d. The Continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
- e. Fair wear and tear, any accident or act of God.
- f. The Warranty shall cease, and Rocket POS shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without Rocket POS's consent.
- g. In Respect of all claims Rocket POS shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.
- 14.8 For Goods not manufactured by Rocket POS, the warranty shall be the current warranty provided by the manufacturer of the Goods.
- 14.9 Rocket POS shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- 14.10 In the case of second hand Goods, the Customer acknowledges that he has had full opportunity to inspect the same and that he accepts the same with all faults and that no warranty is given by Rocket POS as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. Rocket POS shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.
- 14.11 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will not be accepted once production has commenced, or an order has been placed.
- 14.12 Rocket POS is not liable to replace or refund any equipment if customer change mind after purchasing the goods.
- 15. OTHER TERMS AND CONDITIONS**
- 15.1 The person signing this Agreement confirms that they are properly and duly authorised to sign on behalf of the Customer. Should they not be authorised then they agree to accept full responsibility for all aspects of this Agreement on a personal basis;
- 15.2 In some instances, Services and/or End User Services will require specific additional terms and conditions (including terms of Third Parties). If not specifically noted in these terms and conditions, we will provide these to you and those terms and conditions also form part of this Agreement. Further, where those terms and conditions are not consistent with these terms and conditions, then these standard terms and conditions will take precedence;
- 15.3 This Agreement, and any other specific terms and conditions provided relating to Service or End User Services, is the whole Agreement between us, and you have not relied on any other statement, document or promise made by a third person introducing you to us, whether before or after this Agreement is executed. You acknowledge that we may pay a commission to that introducing person or business;
- 15.4 The terms of this Agreement cannot be varied or waived by you without our written consent;
- 15.5 Any provisions which are invalid in law will be ineffective but will not make any other provisions invalid;
- 15.6 You will indemnify us against any claim or loss suffered by us as a result of you being in breach of any terms and conditions imposed by any Third Party in relation to supply of Services or End User Services or the Equipment.
- 15.7 Set-off: If the Customer fails to make any payment to the Company when due, the Company may debit the amount to any other account of the Customer with the Company or any related company or deduct it from any amount the Company or any such related company owes the Customer.
- 15.8 If at any time any provision of this Agreement becomes illegal, invalid or unenforceable in any respect then that provision shall be severed from this Agreement and the legality, validity or enforceability of the remaining provisions of this Agreement shall not be affected or impaired in any way.
- 15.9 The rights and obligations expressed in this Agreement shall not be abrogated, prejudiced or affected by the granting of time, credit or any indulgence or concession to the Customer or any other person whomsoever by the Company or by any compounding, compromise, release, abandonment, waiver, variation, relinquishment or renewal of any of the rights of the Company or by any omission or neglect or any other dealing matter or thing which but for this clause could or might operate to abrogate, prejudice or affect the rights of the Company or the obligations of the Customer or Guarantor under this Agreement
- 16. GOVERNING LAW**
- 16.1 This Agreement is governed by and shall be construed in accordance with the laws of New Zealand.
- 17. ELECTRONIC TRANSACTIONS ACT 2002**

- 17.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act 2002 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 18. CONSUMER GUARANTEES ACT 1993**
- 18.1 This agreement is subject to the provisions of the Consumer Guarantees Act 1993 in all cases except where the Hirer is contracting within the terms of a trade/business.
- 18.2 In cases where the Hirer is contracting within the terms of a trade/business it is specifically excluded.
- 19. THE PRIVACY ACT 1993**
- 19.1 The Customer, directors and Guarantors authorise us to collect, retain and use personal information about you and/or the Guarantor (the "Information") including directors in the case of a limited liability company or trustees in the case of a trust.
- 19.2 The Customer, directors and Guarantors authorise us (and any financier to whom this Agreement may be assigned ("a financier") to provide and request the information to and from any person for assessing the Customers, directors and/or Guarantors credit worthiness, administering the financing of the Equipment and/or Services, enforcing our (or any financier's) rights (as applicable) under this Agreement or at law, marketing goods and services provided by us or our related companies or a financier (as applicable) and providing information to or requesting information from, Third Parties or credit agencies for the purpose of maintaining effective credit records and assessing the Customers, directors or Guarantors credit worthiness;
- 19.3 The Customer irrevocably acknowledges:
- a. That the information shall be deemed to be held by the Company, Third Parties and by any other person for the purposes described above
- b. That where the information can be readily retrieved, the Customer shall have access to it, the right to request correction and the right to be notified of action taken in response to any such request, subject to payment of any reasonable charge
- 20. CREDIT CONTRACTS AND CONSUMER FINANCE ACT 2003**
- 20.1 I/we declare, for the purposes of section 14(1) of the Credit Contracts and Consumer Finance Act 2003 (the "Act"), that any rental/purchase agreement and related securities ("Agreement") entered into with and/or in favour of any financier or discounter of the Customer's agreement(s) upon acceptance of this order is not a 'consumer credit contract' as that term is defined by the Act because the credit to be made to me/us pursuant to the Agreement is to be used by me/us primarily for business or investment purposes.
- 20.2 I/we hereby confirm that I/we have read this declaration, that I/we understand the terms hereof (including for the avoidance of doubt, this declaration) and that I/we hereby irrevocably waive any defence or counterclaim that I/we may have against the financier or the discounter of my/our agreement whether now or in the future in connection with the enforcement of this declaration by that financier or discounter which may arise as a consequence of my/our electing not to obtain independent legal advice prior to acceptance of this agreement.
- 21. PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA")**
- 21.1 Where you have received Equipment from us, you agree:
- 21.2 That this Agreement creates a Security interest for the value of this Agreement in accordance with the PPSA;
- 21.3 To waive your right to receive verification statements connected with any financing statement or financing change statement registered under the PPSA in relation to the security interest arising under this Agreement;
- 21.4 To the extent permitted by law sections 114(1)(a) and 133 of the PPSA will not apply;
- 21.5 To the extent permitted by law they will have none of the rights referred to in section s116, 199, 120(2), 121, 125, 126, 127, 129, 131 and 132 (PPSA) and
- 21.6 That where the Company has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.
- 21.7 You must do all such things and execute all such documents as we may require to ensure that the Company has a perfected first ranking security interest(s) in the Equipment and for indebtedness relating to the fees payable under the terms of this Agreement; and
- 21.8 You will indemnify us for any costs the Company incurs in doing any of the above including registering, maintaining and enforcing the security interest; and
- 21.9 You will immediately upon request by us, procure from any person considered by the Company to be relevant to its security position, such agreements and waivers as the Company may at any time require; and
- 21.10 You will immediately notify us of any change in (i) your name, (ii) any trading or business name you may use or (iii) in the legal or beneficial shareholding in the Customer.
- 22. ACCESS AND REPOSSESSION**
- 22.1 You must allow us to enter any premises where we believe that the Equipment is located for the purposes of exercising any of our rights (including retaking possession) of the Equipment in accordance with this Agreement.
- 23. OUR RIGHT TO COMPLETE THIS AGREEMENT**
- 23.1 You authorise us to fill out any spaces left blank by you in this Agreement, including but not limited to, the Term or Service Level or Fees, and to correct any errors relating to any aspect of this Agreement.
- 24. POWER OF ATTORNEY**
- 24.1 The Customer irrevocably appoints the Company and any authorising officer of the Company severally to be the attorney of the Customer to execute all such documents and to do such things as may be required on the part of the Customer to give effect to the provisions of this Agreement.
- 25. PRICE**
- 25.1 At Rocket POS's sole discretion, the Price shall be either:
- a. as indicated on any invoice provided by Rocket POS to the Customer; or
- b. Rocket POS's quoted price which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 25.2 Rocket POS reserves the right to change the Price: if a variation to Rocket POS's quotation is requested. Any variation from the specifications of the Goods (including, but not limited to, any variation as a result of increases to Rocket POS in the cost of taxes, levies, model upgrade, missed installation appointments, reinstallations, delays in delivery due to incomplete services required to operate the Goods including but not limited to, power, telephone or other required cabling) will be charged for on the basis of Rocket POS's quotation.
- a. Payment may be made by electronic/on-line banking, credit card, DIRECT DEBIT, GOCARDLESS or by any other method as agreed to between the Customer and Rocket POS.
- 25.3 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to Rocket POS an amount equal to any GST Rocket POS must pay for any supply by Rocket POS under this or any other agreement for the sale/hire of the Goods. The Customer must pay GST, without deduction or set off any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 25.4 The pricing will be at the rates as quoted at the time of entering this Agreement and the Company reserves the right to vary the rates from time to time by giving at least 30 days written notice to the Customer. The variation shall take effect from the date nominated in the notice;
- 25.5 The Company may pass on any increase in the cost of the Service, the installation or provision of the Service where such increase is caused by
- a. any act, omission or delay by you or any variation in the Equipment or Service ordered, requested by you after the date of this Agreement or any material fact not discoverable at the date of this Agreement;
- 26. PAYMENT OF FEES/COMMISSION**
- 26.1 There is no right of off set for any reason and you agree to pay all Fees (including GST) on the due date. If you are receiving Equipment you must pay all Fees (plus GST) whether the Equipment is, for any reason, not useable;
- 26.2 Payments shall be weekly and/or monthly by direct debit from your bank account to the Company unless otherwise agreed by us in writing. Fees may be changed with 30 days written notice to you;
- 26.3 You agree to pay all costs which we incur by your breach of this Agreement, including enforcement;
- 26.4 Payment is not deemed to have been made until it has been cleared by the Company's bank.
- 27. INSURANCE**
- 27.1 The Equipment is at your risk from the date of signing this Agreement;
- 27.2 You must insure and keep insured the Equipment with an insurer approved by the Company. Such insurance must:
- a. Be for such risk and for such amount or amount(s) and on such terms as are set out in this Agreement or as are otherwise acceptable to the Company;
- b. Provide all losses are payable to the Company.
- 27.3 You must provide us with details of the insurer and policy number if requested.
- 27.4 If you do not affect or keep such insurance, the Company may affect or keep such insurance at your cost either in the name of the Company or the Company and the Customer;
- 27.5 You must immediately notify the Company and the insurer of the happening of any insured event in relation to the Equipment;
- 27.6 Any moneys payable under any insurance policy covering the Equipment must be paid to the Company unless otherwise consented to in writing by the Company;
- 27.7 The Company may:
- a. Apply the insurance moneys to replace or repair the Equipment if in the Company's opinion the insurance moneys are adequate for this purpose;
- b. Terminate this Agreement by giving notice to the Customer if in the Company's opinion the insurance moneys are not adequate to repair the Equipment; and
- c. Be entitled to receive and apply any insurance moneys towards payment of Fees and other moneys payable to the Company under this Agreement.
- 27.8 The Customer appoints the Company its attorney to recover and/or compromise any claim for loss or damage under any insurance policy relating to the Equipment or otherwise to give valid releases or receipts for such claims.
- 28. TERMINATION AND DEFAULT**
- 28.1 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Rocket POS as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 28.2 It is fundamental provision of this Agreement that should any of the following events occur:
- a. You or the Guarantor fails to observe or perform any of the provisions of this Agreement including failure to make payment of any Fees and such default continues for 7 days; or
- b. You breach of any of the terms of the insurance policy in relation to the Equipment or it is refused or cancelled; or
- c. We discover a false statement or omission made by you in this Agreement; or
- d. An application is made to adjudicate you or the Guarantor bankrupt or an application or resolution is passed for your or the Guarantor's liquidation or winding up, or you or the Guarantor are dissolved or struck off the NZ Companies office register; or
- e. A receiver, liquidator, administrator or like person is appointed to you or the Guarantor or any part of your assets and income or the Guarantor's assets and income; or
- f. Any act which you cause, or permit threatens the safety, condition or safe keeping of the Equipment; or
- g. You or the Guarantor ceases to carry on your business or you or the Guarantor repudiate this Agreement or you're or the Guarantor's conduct indicates that you or the Guarantor no longer intend to be bound by this Agreement.
- h. You or the Guarantor allows a judgment or order against it to remain unsatisfied; THEN we may at any time, and without notice, terminate this Agreement and (if applicable) take possession of the Equipment. In addition, you provide us with the right to request suspension or termination of the Services until such time as the default has been rectified and/or all Fees owed have been paid;
- 28.3 At the date of termination, you shall pay us the following cumulative amount ("Pay-out Amount"):
- a. Any fees owing which you have not paid, including any cost incurred by us including those incurred in obtaining or attempting to obtain possession of the Equipment and the removal, storage and sale of the Equipment (if any);
- b. All compound interest accrued on such amounts at the rate of 2.5% from the due date until payment is made to the Company calculated daily;
- c. The market value of the Equipment (if any), if it is not returned;
- d. The cost of any repair or damage to Equipment (if any);
- e. Any termination Fees, payable at the then current rates charged by us;
- 28.4 This does not limit your liability to us for any other legal action we may have against you for any breach;
- 28.5 Any fees owing at the date of termination shall be immediately paid and the Service Level shall cease to be provided at that date;
- 28.6 Any fees that have been paid at the date of termination shall be deemed to have been fully utilised;
- 28.7 After termination we may issue an invoice to you for any additional Fees (including costs of collection and/or interest) which shall be immediately paid by you;
- 28.8 After the termination or expiry of this Agreement, we may enter the Location and remove all Equipment and Software relating to the Services provided. You also agree to return immediately any
- i) documentation
- ii) marketing material
- iii) collateral
- iv) other information or data relating to the Services provided by us
- 28.9 In the event the gears are not returned by the customer there will be a minimum pick up charge of

- \$100 + GST and additional charges at the rate of \$1/ KM.
- 28.10 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 28.11 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent, and that this agreement creates binding and valid legal obligations on it.
- 28.12 No allowance whatsoever can be made for time during which the Goods are not in use for any reason. In the event of Goods breakdown hiring charges will still be payable during the time the Goods are not working and Rocket POS will not be held liable for any financial loss incurred due to any Goods breakdown.
- 29. END OF TERM**
- 29.1 This Agreement shall be automatically extended beyond the Initial Term for further successive periods of 12 months (each a "Renewal Term") unless you deliver notice to us within the final 3 months of the Initial Term or then current Renewal Term (as applicable) terminating this Agreement at the expiry of the Initial Term or the then current Renewal Term (as applicable).
- 29.2 The Customer acknowledges that, where it is taking Equipment, it has taken or will take possession of the Equipment on the Commencement Date.
- 29.3 Where you have taken Equipment and when this Agreement is duly terminated, you must, on the day of termination, return the Equipment to us at our registered office and pay for any costs of delivery. Failure to do so will result in us invoicing you for the market value of the Equipment.
- 30. CANCELLATION**
- 30.1 Rocket POS may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer.
- 30.2 On giving such notice Rocket POS shall repay to the Customer any money paid by the Customer for the Goods. Rocket POS shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 31. EXCLUSION OF LIABILITY**
- 31.1 All conditions, warranties and guarantees implied by law are excluded. We have made no representation or statement and give no condition, warranty or guarantee about;
- The Condition, Quality, Fitness, Suitability or safety of the Equipment
 - The date the Equipment will be delivered,
 - Any taxation issues or
 - The Service provided.
- 31.2 We do NOT guarantee that the Equipment will work at all sites and in all instances. It is up to you to ensure that the Equipment meets your needs and the Service is acceptable before signing this Agreement or buying the equipment;
- 31.3 You acknowledge that the Services and the Equipment supplied are for business purposes only and therefore that the provisions of the Consumer Guarantees Act 1993 do not apply. We are not liable to you or anyone else for any loss, damage, expense or claim, direct, indirect or consequential arising out of the performance or non-performance of the Product and/or Equipment and/or Services;
- 31.4 In any event, the total liability of the Company for any breach will be limited, at the option of the Company, to any one or more of
- The replacement of the same or equivalent Equipment or Service,
 - The repair or payment for repair of such Equipment,
 - Repayment of all Fees paid up to the date liability is proven;
- 31.5 We take no responsibility nor accept any liability for the performance of Third Parties in relation to the delivery of Services;
- 31.6 We take no responsibility nor accept any liability for the accuracy or statutory compliance of messages scripted by you;
- 31.7 We accept no liability for claim or prosecutions arising from any music, video, advertising or message placed as part of the Service.
- 32. GUARANTEE**
- 32.1 The Guarantors jointly and severally guarantee to pay to the Company all fees that become owing by the Customer under this Agreement. The Guarantors give this Guarantee because the Company has agreed, at your request, to enter into this Agreement;
- 32.1 The Company may enforce this Guarantee against the Guarantors before exercising its rights against you. This Guarantee remains enforceable against the Guarantors in any event whatsoever, including changing of the terms, releasing you from some obligations and/or giving you extra time to pay.
- 32.2 The Guarantors acknowledge that the Customer may acquire from the Company Equipment and/or Services additional to that described in the Agreement and this Guarantee extends to that further Equipment and/or Services.
- 32.3 The guarantee is a continuing guarantee until actual performance by the Customer of its obligations under this Agreement.
- 32.4 As a separate and independent stipulation, the Guarantor agrees to indemnify the Company against any loss or damage the Company may suffer or sustain by reason of any breach by the Customer of the terms of this Agreement or by reason of this Agreement becoming void or unenforceable in any respect against the Customer.
- 32.5 Connection speeds identified with each Service represent theoretical maximums that can be achieved. The Company does not guarantee this speed nor response times or network access.
- END USER SERVICES**
33. You agree that you will not enter into any agreement with any other party for the provision of Equipment, Services or End User Services at the Location that are the same or similar to those provided under this Agreement and that we will be the exclusive provider to you;
- 34.1 You grant us the right to use (at no cost) your branding and other information as to your Location and other contact details and business information, on our captive portal and/or web site and/or other place for marketing and promotion of the locations for access to the Services or End User Service;
- 34.2 You also agree to display documentation, marketing material, price lists, collateral or other information in relation to the Product, Services and/or End User Services;
- 34.3 You agree to make all reasonable efforts to ensure the ongoing functioning of the Services or End User Service;
- 34.4 You agree to pay any costs incurred by us due to any breach of this Agreement and/or any repairs needed to the site infrastructure to restore the Services;
- 34.5 You must observe and comply with the provisions of the Fair-Trading Act 1986, the Consumers Guarantees Act 1993 and all other applicable laws, regulations and requirements of any government or statutory body, including applicable industry guidelines or codes of conduct.
- 34. CONFIDENTIALITY**
- 35.1 This Agreement is confidential and all information in relation to it, including any Software, Services, Equipment, pricing and other commercially sensitive information, is strictly private and confidential. On termination or expiry of this Agreement, you will not divulge any information in it to any third party or use it in any way for your own advantage, unless,
- the information becomes public knowledge otherwise than by us;
 - you are required by law to make the disclosure; or
 - we have consented in writing to the disclosure.
- 35.2 All Services are provided on the basis that the acceptable use policy is in place and updated from time to time, is always adhered to by you.
- 36. PROHIBITED USES**
- 36.1 You agree that you will not: use the Services for any unlawful purpose, defined at the total discretion of the Company, but including any actions that may be construed as being an infringement of any copyright or intellectual property rights, or otherwise is objectionable, or impacts another person in going about their lawful duties and/or constitutes a criminal offence.
- 37. ACCEPTABLE USE POLICY**
- 37.1 You have been registered as a user of the Services and allocated a specific range of Internet access and usage to the level specified in this Agreement. Any usage in excess of that usage may be charged for at the Company's total discretion, including the downloading of excessive data, permanently connecting to the services dial up, entering multiple connections without permission, using the Static IP address to provide hosting services (including FTP, P2P and open relays) without permission, and any other operations that impact other users.
- 37.2 You must not use the service for any type of spam or unsolicited emails, nor for any indecent or objectionable material. In this case the Company reserves the right, at its option to disconnect and/or cancel your account.
- 38. UNAUTHORISED USE**
- 38.1 As the registered user of the Services, you are responsible for any misuse of the Services, even if the misuse was committed by a friend, family member, staff or guest with access to your account.
- 38.2 In consideration of Rocket POS agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 38.3 The Customer indemnifies Rocket POS from and against all Rocket POS's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Rocket POS's rights under this clause.
- 38.4 The Customer irrevocably appoints Rocket POS and each director of Rocket POS as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 24 including, but not limited to, signing any document on the Customer's behalf..
- 39. DISPUTE RESOLUTION**
- 39.1 Any dispute arising between the customer and Rocket Pos Must first be referred to mediation, a non-binding dispute resolution process in which an independent mediator facilitates negotiation between the parties.
- 39.2 Mediation may be initiated by either party writing to the other party and identifying the dispute which is being suggested for mediation.
- 39.3 If arbitration shall fall then within thirty days (30) days, then the customer may seek alternative avenues to resolve the dispute.
- 40. SOFTWARE AND INTELLECTUAL PROPERTY**
- 40.1 Where we provide you with Software to operate on your hardware (as supplied by you), or Equipment supplied by us to provide the Service, you agree that you have no ownership of this Software and all intellectual Property remains with us. Further, should we further develop the Software, with or without your assistance and knowledge, you agree that all rights to such developments remains with us;
- 40.2 Associated electronic music, electronic video and message files supplied by us remain the property of us;
- 41 You are not to permit or allow staff or any Third Party any access to the Software and/or files in any way which may facilitate the analysis, copying, reverse engineering of the operating system or copying of any music, video or message files. We reserve the right to claim compensatory or other relief for breach of this condition
- 42. TERMS**
- 42.1 The Customer must advise Rocket POS in writing via email, giving at least 3 months (90) days prior notice from the end term of intention, to terminate this agreement.
- 35.1 If written notice via email is not provided within 3 months (90) days) from the date of the end term, then the contract will extend for a period of 12 months from the date of the notice before it is terminated. The new end term of the agreement in this case will be exactly 12 months (365) days) from the date that the written notice to terminate the agreement was given.
- 35.2 Rocket POS may terminate this agreement at any time without giving the Customer written notice.
- 36 On termination of the hire, deliver the Goods complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted, to Rocket POS