



ABC Software Limited (called “we” “us” and “our”)

Standard Terms and Conditions

Set out below are Terms and Conditions (“Terms”) that apply to products and services ABC we provide to clients.

Note that these are default terms and conditions. Any specific terms or conditions in an Engagement Letter or within a binding Client Agreement will prevail over these Terms if there is any conflict between them.

Subject to these Terms will apply unless and only to the extent expressly agreed otherwise and are deemed accepted by you when an Engagement is agreed to, when a Support and Licence Agreement is agreed or performed, and when a Product or Service has been received and/or paid for by you.

1. Defined Words and Phrases

These Terms have defined words and phrases. They have agreed meanings to ensure consistent understanding. Defined words and phrases commence in upper case, as below:

- 1.1 “ABC Software” means any software product supplied by us, including ABCgrower, ABCspray and ABCpacker as well as client specific, unique, or customised solutions.
- 1.2 “Bugs” means minor defects in our design or implementation which are not the consequence of or affected by outside influences. “Outside influences” for the purposes of this definition include the effects of third-party software or upgrades or alterations to third-party software, malware, or user error.
- 1.3 “Client Agreement” means a detailed contract setting out the terms and conditions of a complex Engagement. Such a document will be designed to be signed by the parties to the Engagement however even if it is not signed it will be binding on them as soon as any part of the Engagement has been performed and/or accepted by the other party.
- 1.4 “Confidential Information” means all information which is provided by us or by you (including respective employees and/or agents) to the other

at any time (whether or not in connection with an Engagement). This includes information which is stated to be confidential or commercially sensitive or which is by its nature reasonably intended to be confidential and/or commercially sensitive but excludes information in the public domain or which by its nature could not reasonably be regarded as confidential.

- 1.5 “Engagement” means an agreed supply of Products or Services by us.
- 1.6 “Engagement Letter” means a document, that may be in the form of a letter or email or similar communication, from us setting out the essential terms and conditions whereby we will deliver Products and/or Services to you.
- 1.7 “Force Majeure” means any event or circumstance which is outside of the control of a party and affects their ability to perform their obligations, by way of example a weather event, an earthquake or other “act of God”, an epidemic or pandemic, Government action or restriction, a war strike or lockout, civil or economic unrest, or an internet or power outage.
- 1.8 “Intellectual Property” means copyright, patents, registered designs, trademarks, and all other similar rights in relation to Products and Services, whether legally recognised or not.
- 1.9 “Party” refers to us or you and “parties” refers to you and us.
- 1.10 “Products” means software solutions such as ABC Software or other customised solutions and related or incidental products sold or supplied by us.
- 1.11 “Services” means services supplied to you, which may include software as a service solutions and support, advice, attendances to assist you in relation to Products, software maintenance and backup, training, and any similar service.
- 1.12 Our “Support and Licence Agreement” (SLA) sets out licence fees and our service level undertakings.
- 1.13 “Source Code” means the base software platform and underlying code on which ABC Software operates.

2. Confidentiality and Privacy

- 2.1 The parties both undertake not (except to any extent specifically agreed) to disclose the other’s Confidential Information to any third-party. This excludes however where disclosure is compelled by law (but the discloser will first give the owner of the information a reasonable opportunity to object to the disclosure).
- 2.2 In terms of the Privacy Act 2020 you authorise us to collect your personal information either directly from you or from any other agency. A refusal by you to provide this information may affect our ability to deliver Products and/or Services. Our Privacy Policy applies to this information. See <https://3w4kd2v76f93xgs4o12vj77-wpengine.netdna-ssl.com/wp-content/uploads/2022/07/202206-ABC-Privacy-Policy-3.pdf>

3. Payment

- 3.1 Fees charges and costs will be set out in Client Agreement or Engagement Letter.
- 3.2 We may charge in addition to our fees a recovery for reasonable travel and/or accommodation costs incurred and also for any additional services provided that are outside of the scope of Services agreed. This may include costs incurred prior to entering a Client Agreement or Engagement Letter.
- 3.3 Fees charges and costs are payable calendar monthly in arrears together with any associated GST. Payment will be made in the invoiced currency into our nominated bank account not later than the 20th day of the month after invoice.
- 3.4 Payment must be made in full, without set-off or deduction.

4. Intellectual Property

- 4.1 Intellectual Property in all Source Code is and remains our exclusive property.
- 4.2 Except to any extent otherwise agreed Intellectual Property in other Products and Services supplied by us to you will also belong to us, which includes Intellectual Property in tools, software or processes we use to deliver Services (excluding Intellectual Property proprietary or other third-party software which will belong to them).
- 4.3 Upon full payment for any Software which has been uniquely customised for you, Intellectual Property in it may be transferred or licensed to you if that has been agreed but subject however to the terms and conditions for transfer or licence.
- 4.4 Subject to this you are granted a non-exclusive user only licence to use Products supplied by us, but this is strictly conditional upon timely and full payment by you of all applicable fees charges costs and GST, and upon compliance with all notified operating instructions and terms of use.
- 4.5 You have no right to use Products for any purpose other than that for which they were supplied. You must not decompile, alter, copy or "reverse engineer" manipulate or use any Products supplied or otherwise use our Intellectual Property for any purpose not agreed with us.
- 4.6 Unless otherwise agreed any warranty in Products and any obligation we have to service Products supplied to you will be invalid or excused if they are installed modified or maintained by anyone other than us or if otherwise you breach obligations in these Terms.
- 4.7 We have the right to display or advertise on our website or elsewhere your identity as our client and the general nature of any work completed for you, for the purposes of promotion or to demonstrate our abilities.

5. Our commitment

- 5.1 We will strive to provide client focussed outcomes for all our engagements in a professional and timely manner in accordance

with our Engagement Letter or Client Agreement or Support and Licence Agreement.

- 5.2 We undertake to communicate regularly and openly with you and to have direct and practical discussions about any aspect of an Engagement as and when required.
- 5.3 We will be proactive in approach, and we will endeavour to align our Products and Services to your business needs. We will be receptive to requests for variations or modifications and where suitable, but subject to our terms and conditions for supply (including additional payment if this is not included in our Engagement and upgrades to your operating environment), we may introduce upgrades to our software.

6. Your obligations

- 6.1 You will need to have an operating environment (hardware and operating software) that is suitable for our Products. We will let you know if your operating environment is not suitable for our Products.
- 6.2 You will pay us for our Products and Services as and when agreed as a condition of our continued supply, without set-off or deduction, into our nominated account. Unless otherwise agreed payment shall be in New Zealand currency.
- 6.3 You will also pay us all costs and charges we incur on your behalf to deliver Products or Services and also all costs we may incur enforcing or attempting to enforce your payment or other obligations.
- 6.4 You will ensure we have remote access to your system to install and maintain our Products and Services.
- 6.5 You will ensure that we have safe access to your premises. You are responsible for the safety of all our employees, contractors or agents who visit your workplace to install or maintain Products and/or perform Services. We may elect to supply Products and Services online.
- 6.6 You are responsible for back up and recovery of all data.
- 6.7 You will ensure that your staff are suitably competent to operate the Products. You will ensure they are supervised to the extent needed for compliance with your obligations.
- 6.8 You will only operate our Products and access our Services according to operating instructions and user conditions from time to time notified by us. You will not copy or decompile our Products, nor will you transfer or attempt to transfer them to any third-party. They must be used only for your business, for the purposes they were designed and as contemplated at the time the Engagement commences.
- 6.9 You will ensure third-party software is at a Version that correctly interact with our Products.

7. Warranties and Liabilities

- 7.1 Except as specifically agreed by us all guarantees, warranties and conditions on our part implied by any relevant law are excluded to the maximum

extent allowed, and in particular those in the Contract and Commercial Law Act 2017, the Consumer Guarantees Act 1993 and the Fair Trading Act 1986 will not apply.

- 7.2 We are not liable for any fault or performance failure in Products or Services unless the fault or failure is due to or caused by an error or design fault on our part.
- 7.3 We do not guarantee that our Products are free from Bugs. We will at our cost promptly fix any Bugs so long as they are notified to us when they are first detected, and in any event not later than 3 months after the Product is installed.
- 7.4 However, we are not liable for any consequence of third-party interference with any Product, whether deliberate or otherwise. No third-party is authorised to sell service maintain or alter our Products (including fixing Bugs).
- 7.5 We will not be liable for indirect or consequential damage or for any loss of business, property, profit, or data, however caused, which may be suffered incurred or alleged or which may arise directly or indirectly from the use of our Products, the provision of Services and in any event the maximum amount we can be liable for is the total of all sums we have received from you for the work affected.
- 7.6 We will not be liable for any delay or failure to perform Services if such failure or delay is due to an event or events over which we could not reasonably have exercised control.

8. Termination

- 8.1 Unless the nature of the Services or the Engagement Letter or Client Agreement dictate otherwise, but subject as below, either party may terminate and discontinue the Services by not less than 90 days written notice to the other.
- 8.2 If you terminate or reschedule an Engagement before its completion you must pay us any costs incurred up to the termination or as a result of the termination. This includes any costs in respect of any contractual commitments made by us to third parties, and also any fees due to us to the date of termination.
- 8.3 As an alternative to termination, if you fail to pay or perform any other obligation, we may suspend the Services or defer delivery of Products. Where Services or Products are delivered online this may include disablement of the online account. Suspension may be temporary or permanent.

9. Disputes

- 9.1 If any dispute arises between the parties in relation to an Engagement, Products or Services the parties will refer that dispute for determination of an expert with particular knowledge of the matters in dispute and expertise in resolving and determining dispute.
- 9.2 The expert, if not agreed by the parties within 10 days of notification to the other by the party claiming a dispute, will be appointed (at the request of either party) by the current Hawkes Bay branch President of the New Zealand Law Society. The expert will be empowered to set his

or her own processes and timetable and may award costs to either party as well as damages or interest.

- 9.3 The expert will not act as an arbitrator or mediator and any determination of an expert by this process will be final and binding with no right of appeal.

10. Changes to these Terms and Conditions

- 10.1 We may change these Terms from time to time by written notice to you. Once you are notified of any such change, they will be deemed accepted by you.

11. Jurisdiction

- 11.1 These Terms are governed by New Zealand law and are subject to the non-exclusive jurisdiction of the Courts of New Zealand.

12. Notices and communications

- 12.1 Any notices to be served to us shall be sent to us at the address specified in the Engagement Letter or Clients Agreement, as updated from time to time.
- 12.2 Any notices to be served to you shall be sent to your last known address. We will send notices to the address you specify at the commencement of the Engagement. If you change your address you must notify us promptly.

- 12.3 It is your responsibility to ensure we have up to date contact details. We will communicate with your representative nominated at commencement of the Engagement or with any replacement person later notified. Likewise, you should communicate with our representative as notified at that time or as later changed.

13. Force Majeure

- 13.1 We will not be liable for any act, omission, or failure to fulfil our obligations under this Agreement if such act, omission, or failure arises from any Force Majeure or similar event or circumstance.
- 13.2 If we are unable to fulfil our obligations due to Force Majeure we shall:
 - 13.2.1 immediately notify you in writing and provide details of the Force Majeure event including an estimate of the time likely to be required to overcome the event;
 - 13.2.2 use our best endeavours to overcome the event and minimise the loss to you.
 - 13.2.3 continue to perform our obligations as far as practicable.