



ASKATECHIE LIMITED

Terms of Trade

Except to the extent agreed otherwise in writing by AskATechie, these Terms and Conditions apply to the provision of the Product and the Services by AskATechie Limited (AskATechie) to the entity identified in the quotation (**Customer**) and to any use of the Product and the Services.

1. Terms

1.1 AskATechie Limited t/a AskATechie (hereinafter referred to as AskATechie) any you as the Customer refers to the person or company purchasing goods or enlisting the services of AskATechie.

2. Price

2.1 All prices quoted are in New Zealand dollars and exclude GST and freight unless otherwise specified. We reserve the right to adjust prices without notice.

2.2 When purchasing software or licensing, the purchase price is for goods selected and (unless specified) is exclusive of installation and maintenance.

2.3 All quotes for Project works including email migration works will specify our charges for Standard Operating Hours and charges for work outside the standard Operating hours, depending on the project requirements.

2.4 AskATechie may require payment in advance for the supply of any hardware or software for the Customer.

2.5 If an on-account payment is offered, payment of the account is due within the agreed terms otherwise the remainder of the account is due immediately following issue of an invoice.

2.6 All prices are subject to change with reasonable prior notice.

3. Payment Terms

3.1 All Service Agreements are for a minimum period of 12 months and will auto renew for a further 12 month period on the anniversary date of the date the Service commenced.

3.2 Payment for new Customers is due in full upon delivery and/ or completion of work, until such time as an account is set up. Payment of accounts issue on the agreed date of within 7 days of the date of the invoice.

3.3 All payments made by credit card will incur a surcharge.

3.4 AskATechie may require a deposit be paid, this will be agreed between the parties.

- 3.5 Monthly Customers will receive an invoice of the 1st of every month with payment being due of the 5th of the same month. All other invoices are due on the 20th of the month following the date the invoice was issued.
- 3.6 Upon estimate, quotation, scope, or order is accepted via our Xero Portal or paced by the Customer, it is binding on the parties.
- 3.7 Interest at the rate of 3.5% may be charged on overdue accounts and shall accrue on a daily basis starting from the date the payment was due.
- 3.8 AskATechie reserves the right to cancel or suspend contracts with the Customer until all monies owing are paid in full.
- 3.9 In the event of default any default by the Customer in paying for the services and/or goods provided, the amount outstanding will be passed on to a debt collection agency. Any expense, disbursements, time to recover, reasonable solicitors' fees or debt collection fees incurred by AskATechie in the enforcement of any rights contained in this contract shall be paid by the Customer. The Customer indemnifies AskATechie against all costs (including legal costs), losses and expenses.
- 3.10 All sums payable by the Customer shall be made in full without set-off or counterclaim and, except to the extent required by law, free and clear of any deduction on account of tax or otherwise. A dispute between the parties does not entitle the Customer to set off against, or withhold payment of, any money owing to AskATechie.

4. Service and Delivery

- 4.1 Any charges for handling (including packing materials) and freight charges are an extra cost and payable by the Customer unless otherwise agreed in writing. We will endeavour to use the most cost-effective delivery method where possible.
- 4.2 Any time stated for delivery is an estimate only. No claim shall be made by you on account of late shipment, or delivery however caused.
- 4.3 AskATechie is not responsible for damage to the goods in transit. Claims for losses or damage to goods in transit must be made directly to the transport agency concerned.
- 4.4 In the event of non-availability of a product or service, AskATechie reserves the right to cancel the Sale Agreement, in which case any purchase price already paid by the Customer will be refunded.

5. Returns Policy

- 5.1 AskATechie may at times offer a return policy on selected items based on manufacturer or supplier return policy. Acceptance of goods for credit shall be at the sole discretion of AskATechie and they reserve the right to charge a re-stocking fee of 30% of the value of the item being returned. AskATechie has no obligation to refund goods if the Customer has changed their mind.
- 5.2 Goods accepted for credit on return shall be returned free of all charges and should include the original packaging and in 100% working condition. The Customer is responsible for shipping charges on returned items.

6. Risk and Title

6.1 Risk passes to the Customer on delivery of the goods. Delivery shall be deemed complete when AskATechie gives possession of the goods directly to the Customer, or possession of the goods is given to a carrier, courier, or other bailee for the purposes of transmission to the Customer.

6.2 **Ownership reserved:** It is expressly agreed that ownership is reserved and legal and equitable title to and property in all goods supplied by AskATechie is and remains vested in the AskATechie until payment in full has been received by AskATechie.

7. Warranties

7.1 The Customer shall receive the benefit of any product warranty associated with any goods purchased. Provided that if the goods have been found to be tampered with the warranty will be void. Any warranty does not apply to any damage caused to other equipment used in conjunction with the goods or a loss of data whilst using said goods.

8. Cancellation of On-Site Visits

8.1 The Customer is required to notify AskATechie of any cancellation a minimum of 24 hours prior to the scheduled start time. Failure to provide such notice shall result in a callout and labour fee of a minimum of 2 hours being charged to the Customer's account.

9. Remote Support

9.1 Any Remote Support work will have a ticket number and time entry generated for each event.

9.2 Remote support shall be charged with a minimum of 15mins per request / incident.

9.3 All Virus and Malware Incidents are excluded from remote support.

10. Software Licenses

10.1 The Customer warrants that they have full legal title to use any software that you ask AskATechie to install on any computer system and AskATechie may require the Customer to provide the original media and licence information for the installation.

10.2 AskATechie may provide the Customer with multiple SAAS technologies, Software as a Service, along with IT support plans and solutions. Each SAAS provider has different terms and conditions and the Customer may request copies of these terms and documents separately.

10.3 The Customer hereby agrees grants AskATechie permission to act as their exclusive agent in all interactions with our SAAS provider's to buy, provision and make changes to your subscriptions as required.

11. Force Majeure

11.1 Either party may suspend its obligations to perform this agreement if it is unable to perform as a direct result of a war, riot, strike, natural or man-made disaster or other circumstances of a similar nature (Force Majeure

Event). Any such suspension of performance must be limited to the period during which the Force Majeure Event continues.

12. Limitation of Liability

- 12.1 AskATechie shall not be liable for any delays or failure in complying with any obligation imposed on them under any contract or for any loss or damage (including indirect or consequential loss of profits, data, or damage) as claimed by you. Should any liability in relation to this agreement (or the goods supplied under this agreement) be imposed on us for any reason, AskATechie's total liability to the Customer is limited to the price of those goods and services supplied by AskATechie to which the liability relates. AskATechie will not, in any case, be liable for any consequential or special damages, including loss of business profits.
- 12.2 Goods and services will only be supplied for the Customer's approved devices. AskATechie accepts no liability in relation to an unapproved device.
- 12.3 Due to the nature of our business AskATechie cannot provide you with a total guarantee for the work undertaken, while we undertake a job, we take all the necessary precautions to avoid any damage to your devices, you as a customer accepts that AskATechie will not be responsible or liable if the following situations occurred.
- (i) A program that is configured in a way that is not recommended by the software vendor or manufacturer.
 - (ii) Support of third party software, application, we do help with general maintenance of third party software with the correct assistance of their respected software vendor support.
 - (iii) Any software or hardware changes to your current environment caused by someone other than A SKATECHIE's engineers.
 - (iv) Where AskATechie provides products only, AskATechie shall not be liable for any loss or damage or injury caused by incorrect installation, operation or use of the product supplied.
 - (v) The Customer hereby indemnifies and will keep AskATechie indemnified against all obligations and liabilities incurred by an act or omission by you in relation to this agreement.

13. Tasks Outside Scope

- 13.1 AskATechie's goal is to create a long-lasting relationship with their customers. AskATechie may be requested to perform other tasks or certain services outside of the scope of this agreement. If they believe any service requests to be out of the scope of this Agreement, AskATechie will ask for the Customer's approval before performing the task or service.

14. Loss Of Service

- 14.1 The Customer recognises that AskATechie makes every attempt to select the most reliable systems and solutions and that AskATechie will make its best efforts to keep the Customer's systems up and running efficiently and cost effectively. AskATechie will not be liable to reimburse or pay any losses incurred by the Customer due to loss of service caused by downtime experienced.

15. Risk of Data Loss

15.1 The customer assumes all risk of data loss from and all causes or in any way related to or resulting from the repair or service of computer hardware, software, or other equipment by AskATechie. The Customer agrees to bear full responsibility for all data backup prior to any repair or service of any computer hardware, software or other equipment by AskATechie. The Customer hereby indemnifies AskATechie from any claim or liability related to data loss for any reason whatsoever.

16. Computer viruses and Malware Attacks

16.1 The Customer assumes all risk in relation to computer viruses or malware attacks. Any work involved in the process to recover the Customer's devices from a virus or malware attack shall be borne entirely by the Customer.

16.2 AskATechie cannot guarantee that the Customer's system will be able to be fully recovered. AskATechie strongly recommend the Customer check their monthly reports to confirm that their data is being backed up as expected.

17. Operating Hours

17.1 Standard office operating hours are 8am to 5pm. AskATechie shall use its best endeavours to ensure support is available 24 hours a day 7 days a week where required. However, any work completed outside of standard operating office hours will be charged at a rate to be agreed between the parties with a minimum of two hours being charged. AskATechie provides no guarantee on response or resolution times for unscheduled work completed outside of standard operating office hours.

18. Security Interest

18.1 The Customer grants AskATechie a security interest (as defined in the Personal Property Securities Act 1999 ("the PPSA")) in:

- (a) All Product and Services supplied by AskATechie to the Customer (as detailed in each invoice supplied to the Customer), and
- (b) The proceeds of such Products and Services, and
- (c) The accounts receivable of the Customer which are the proceeds of Product and Services supplied by AskATechie;

As security for all amounts owing by the Customer to AskATechie at any time from any cause, for present or future indebtedness.

18.2 The Customer acknowledges that, to the extent that AskATechie has rights in addition to those set out in Part 9 of the PPSA, AskATechie may elect to enforce those rights, irrespective of the position under the PPSA.

18.3 To the maximum extent permitted under the PPSA, the Customer agrees to waive its rights as debtor. The Customer has no rights under (or by reference to) sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125, 129, 131, 132, 133 and 134 of the PPSA. In particular, but without limitation, the Customer agrees to waive the Customer's right to receive a copy of the verification statement confirming registration of a Financing Statement or a Financing Change Statement relating to any security interest AskATechie may have in Product and Services supplied to the Customer from time to time.

18.4 The Customer must immediately notify AskATechie of any change in the Customer's name.

19. Privacy Act 2020

19.1 The Customer authorises AskATechie:

- (a) To collect and retain and use personal information about the Customer (including but not limited to the information contained in this document) for the following:
 - (i) assessing the Customer's credit worthiness;
 - (ii) administering the financing whether directly or indirectly of the Customer contracts(s) and enforcing AskATechie's rights thereunder; and
 - (iii) marketing goods and services provided by AskATechie.
- (b) To provide the information:
 - (i) to any person for the foregoing purposes;
 - (ii) to employees and agents of **AskATechie** and any other person, in the ordinary course of business, for any of the foregoing purposes; and
 - (iii) to credit agencies for the purposes of maintaining effective credit records.

19.2 The Customer acknowledges:

- (a) That the information is held by AskATechie at the address of AskATechie, notwithstanding that it may also be held elsewhere by AskATechie and other persons for the purposes described above.
- (b) That where 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.

19.3 That the aforesaid authorisations are irrevocable.

19.4 AskATechie acknowledges that in the course of providing services to the Customer it may learn from the Customer certain non-public personal and otherwise confidential information relating to the Customer, including its customers, consumers or employees. AskATechie shall regard any and all information it receives in any way relates or pertains to the customer, including its customers, consumers or employees as confidential.

- 19.5 AskATechie will take commercially reasonable measures to not disclose, reveal, copy, sell or transfer, assign or distribute any part or parts of such information in any form except as expressly permitted by the Customer or as requires by applicable law.
- 19.6 The Customer also acknowledges that all information and services, consulting techniques, proposals and documents disclosed by AskATechie which comes to its attention during the course of business and provided under this agreement constitute valuable assets of, and confidential and/or proprietary to AskATechie.
- 19.7 The confidentiality provisions contained within this clause 19 shall survive termination of this agreement

20. Dispute Resolution

- 20.1 (a) If a party has any dispute with the other party in connection with this Agreement:
- (i) That party will promptly give full written particulars of the dispute to the other.
 - (ii) The parties will promptly meet together and in good faith try and resolve the dispute.
- (b) If the dispute is not resolved within seven (7) working days of written particulars being given (or any longer period agreed to by the parties) the dispute will be referred to mediation.
- (c) A party must use the mediation procedure to resolve a dispute before commencing arbitration or legal proceedings.
- (d) If the dispute is not resolved in the following ten (10) working days (or within such period as representatives may agree is appropriate) the parties in dispute shall within a further ten (10) working days (or within such further period as the representatives may agree is appropriate) seek to agree on a process for resolving the whole or part of the dispute through means other than litigation or arbitration, such as further negotiations, mediation, conciliation or independent expert determination and on.
- 20.2 Pending resolution of any dispute AskATechie may suspend its obligation to supply services to the Customer until the dispute has been resolved.

21. Termination

- 21.1 Without affecting any other right or remedy available to it, a Party may terminate this Agreement with immediate effect by giving written notice to the other Party if the other Party:
- (a) commits a material breach of this Agreement which breach is not capable of remedy or (if such breach is capable of remedy) fails to remedy that breach within a period of 30 days after being notified in writing to do so; or
 - (b) is subject to an Insolvency Event.
- 21.2 Without affecting any other right or remedy available to it, AskATechie may terminate this Agreement, in whole or (where practicable) in part, with immediate effect by giving written notice to the Customer if:

- (a) The Customer fails to pay any undisputed amount due under this Agreement on the due date for payment and remains in default not less than 10 days after being notified in writing to make such payment; or
- (b) AskATechie's arrangement with a third-party provider who provides any input into the Product or the Services terminates or materially changes; or
- (c) the Agreement becomes illegal or contrary to any law, regulation, guideline or request of any regulatory authority.

AskATechie will endeavour to provide the Customer with reasonable prior notice of any such termination, but may not be able to do so if the triggering event is under the control of a third party.

- 21.3 The Customer must provide AskATechie with 3 months written notice if they wish to terminate this Agreement. The Customer agrees that if they terminate this Agreement at any time other than an anniversary date and with the requisite notice, they will still be liable to pay all charge owing for the remainder of the term.
- 21.4 AskATechie will only return any site passwords or other information directly to the Customer and not to any third party. All costs involved in the IT handover will be the responsibility of the Customer and they must be paid in full prior to the IT handover being completed.
- 21.5 On termination of this Agreement for any reason:
- (a) the Customer shall immediately pay all outstanding invoices and pay any amounts payable for the Product and the Services received prior to termination;
 - (b) all Subscriptions and licences granted under this Agreement shall immediately terminate;
 - (c) AskATechie shall be entitled to immediately cease providing all products and services; and
 - (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination shall not be affected or prejudiced.
- 21.6 If the Agreement is terminated, other than due to the fault or cause of the Customer, the Customer shall be entitled to a pro rata refund of any pre-paid fees in respect of the unused period of the Term.
- 21.7 Any provision of this Agreement which is either expressed to survive termination or by implication ought reasonably to survive termination shall so survive the expiry or termination of this Agreement.

22. Intellectual Property

- 22.1 The Customer acknowledges that all Intellectual Property Rights in the Products and the Services will remain both during the Term and thereafter the property of AskATechie and/or its licensors.
- 22.2 Nothing in these Terms and Conditions limits the Customer's ownership of any pre-existing Intellectual Property Rights in Customer data or Customer materials and any other Intellectual Property Rights

AskATechie agrees in writing are owned by the Customer (**Customer IP**) or Customer's rights to use Customer IP outside of the Product.

22.3 Where the Customer provide any feedback to AskATechie, AskATechie shall be entitled to use that feedback, without restriction or acknowledgement, and AskATechie shall be the sole owner of any resulting Intellectual Property Rights.

23. General

- 23.1 Notices to AskATechie must be sent by email to sales@askatechie.co.nz or to any other email address notified to the Customer by AskATechie. AskATechie may contact the Customer by email, post or personal delivery to the most recent email, postal or physical address the Customer has provided to AskATechie.
- 23.2 This Agreement constitutes the entire agreement and understanding between Customer and AskATechie in relation to the Product and the Services. The Customer acknowledges that in entering into the Agreement it has not relied on any representations made by AskATechie that are not expressed in the Agreement. This clause will not be construed as excluding either party's liability for fraudulent statements.
- 23.3 The Customer warrants and agrees that it is acquiring access to the products and services, and accepting these terms and conditions, for the purpose of trade. As the Customer is acquiring access to the Product and Services in trade, the guarantees implied by the Consumer Guarantees Act 1993 are expressly excluded and the Customer and AskATechie agree to contract out of sections 9, 12A and 13 of the Fair Trading Act 1986 to the extent necessary to permit the inclusion of this clause. The parties agree that it is fair and reasonable that the parties are bound by this clause 25.3.
- 23.4 The Customer may not, without AskATechie's prior consent, assign, transfer or otherwise deal in any way with (or attempt to do any such thing) the benefit of, or any of Customer's rights or obligations under, this Agreement. The Customer agrees that it is and will remain solely responsible and liable for its employees, contractors, subcontractors and any person accessing the Product or receiving the Services through Customer.
- 23.5 AskATechie may assign, transfer or otherwise deal in any way with the benefit of, or any of AskATechie's rights or obligations under, this Agreement without the prior consent of the Customer.
- 23.6 Any variation to this Agreement must be agreed in writing by the Parties, except as otherwise provided for in this Agreement.
- 23.7 No right, power or remedy provided by law or under this Agreement will be waived, impaired or precluded by any delay or omission to exercise it.
- 23.8 If any provision in this Agreement is lawfully illegal, unenforceable or invalid, it may be severed and the determination will not affect the remainder of this Agreement which will remain in force.
- 23.9 This Agreement is governed by New Zealand law.

23.10 Should any dispute arise between the Parties, the Parties will attempt to resolve it in good faith by negotiation. If the dispute is not resolved through negotiation, the New Zealand courts will have non-exclusive jurisdiction over all claims that may arise out of or in connection with this Agreement.

24. Definitions and Interpretation

24.1 The definitions and rules of interpretation in this clause apply in this Agreement.

Agreement means these Terms and Conditions.

Business Day means a day other than a Saturday or a Sunday, on which commercial trading banks are open for business in both Auckland and Wellington, and excludes any day during the period commencing on 24 December and expiring on 5 January in each year, and Business Days has a corresponding meaning.

Confidential Information means information in any form, whether oral or written, of a business, financial or technical nature which ought reasonably to be known to be confidential and which is disclosed by either party in the course of the Agreement.

Customer includes any agent of the Customer.

Fees means the agreed upon fee for the products and services as set out in the relevant quotation.

Force Majeure means circumstances beyond AskATechie's reasonable control.

GST has the meaning given to that term in the Goods and Services Tax Act 1985.

Individuals mean any officers, employees, contractors or personnel (including personnel of any sub-contractors) of the Customer.

Insolvency Event means that a Party:

- (a) is removed from the companies register or has a liquidator, receiver, administrator or statutory manager appointed or any equivalent worldwide;
- (b) becomes (or is deemed to be) insolvent or is unable to pay its debts when they become due or is presumed under statute to be unable to pay its debts; or
- (c) makes or proposes any assignment to, or enters into any arrangement for the benefit of, all or some of its creditors (other than for the purposes of a solvent restructuring).

Intellectual Property Rights means copyright and all other legal and beneficial intellectual and industrial property rights (including patents, design rights (whether registered or unregistered), trade marks (whether registered or unregistered), database rights, know-how and confidential information) whether conferred by contract, common law or otherwise throughout the world no matter what such rights may be known as in any particular country in the world.

Persons means an individual, a corporation or other body corporate, partnership, joint venture, association or trust, state or government, state or government department, authority or agency.

Personal Information has the meaning given to that term in the Privacy Act 2020.



AskATechie LTD

IT Solutions for Your Business



Product means any computer software or hardware or other products supplied by AskATechie to the Customer.

Remote support means, anything that AskATechie's engineers or technicians complete remotely with or without the user interaction, this could be remedial work completed on the Customer's backup systems, documentation completed for the Customer site to keep information up to date.

SAAS means software as a service.

Services means the implementation, training, support or other services described in the relevant quotation or in these Terms and Conditions as the case may be.

24.2 In this Agreement:

the singular includes the plural and vice versa;

a person includes its agents, successors and permitted assigns;

a reference to hours, days, weeks, months or years means hours, calendar days, weeks, months or years, New Zealand time;

a reference to a document or law includes all amendments, supplements or replacements to that document or law;

headings are for convenience only and do not affect the interpretation of this Agreement;

the words "including", "particularly", "such as" and similar expressions are do not limit the general interpretation of the surrounding words;

in the case of conflict or ambiguity between any provision contained in this Agreement and an Order Form, the provision in these Terms and Conditions shall take precedence, unless the Order Form specifically states that it overrides the provisions of these Terms and Conditions;