

Sietec NZ - Terms & Conditions

GENERAL CONDITIONS

APPLICATION AND INTERPRETATION: These General Conditions apply to ongoing sales, installation and service of Equipment by Sietec (NZ) Ltd ("SL") to the "Purchaser", commencing from the Contract date. All other terms and conditions are hereby excluded. No amendment, addition, variation, modification or waiver (in whole or in part) of these General Conditions is effective or binds SL without SL's prior written consent, signed by an authorised officer of SL.

1. **REFERENCES:** to clauses are references to clauses of these General Conditions.
2. **QUOTATIONS:** All prices issued by SL are valid for thirty (30) days from date of issue and after that date are subject to written confirmation.
3. **ACCEPTANCE:** Orders from the Purchaser on SL are subject to acceptance by SL evidenced by the signing of this Contract by an authorised officer of SL or by the supply of the Equipment.
4. **CANCELLATIONS:** Accepted Orders can be cancelled only by written agreement between the parties, signed by an authorised officer of SL. If SL agrees to a cancellation, the Purchaser must pay SL the amounts specified at Clause 20.
For maintenance cancellations, contracts will be in effect for a minimum of twelve (12) months unless otherwise specified. Thereafter it may be terminated on 90 days written notice by either party. Any fee paid in advance will be refunded pro-rata. For Hosted & Subscription based customers the following applies:

- (a) Unless terminated by the customer in accordance with the terms of the Termed Monthly Subscription Agreement, the customer must pay an Early Termination Fee if any services are terminated prior to Hosted Contract End Date (Early Termination Fee). The Early Termination Fee is the amount equivalent to the total fees set out in the Termed Monthly Subscription Agreement which would have been payable up to and including contract end date.
- (b) The customer acknowledges that the Early Termination Fee represents a genuine estimate of the loss incurred by Sietec NZ as a result of early termination and is calculated on a monthly amount due multiplied by months remaining at time of cancellation.

5. PAYMENT:

- (a) Payment terms are as shown on the face of this Contract. If the Customer requests unscheduled on-call remedial maintenance services other than during contracted working hours, or false call outs, those services will be furnished at SL's standard hourly rates then in effect, including travel, and may be subject to the availability of staff. SL may adjust the Contract Price shown on the face of this Contract after a minimum of twelve (12) months has passed from the Service Start Date specified on the face page of this Contract.
- (b) Where a service is provided on a fixed term basis SL retain the right to change the price giving 60 days' notice where;
 - i) The government of appropriate regulatory body introduces, amends or removes a charge, levy, fee of tax rate
 - ii) A supplier Fastcom utilizes for the delivery of its services to the Customer amends its pricing
 - iii) The expected usage by the Customer does not meet or exceeds SL's expectations and due to this the financial model that SL based its pricing in relation to the Customer results in SL not achieving its expected margins, then SL will enter into discussions with the Customer and show how the shortfall/excess has affected Fastcom's position and seek to rectify this with the client.

iv) SL may apply a CPI adjustment annually to the costs outlined in this Agreement including but not limited to labour charges, fixed fee services and Adhoc charges.

6. **RENTAL/LEASE:** If the Purchaser elects to fund the acquisition of the Equipment by an agreement with a financier, (whether by rental, lease, hire purchase or other means) it is agreed nothing in these General Conditions is affected by, or will affect, any provision of the Purchaser's agreement with that financier, nor does SL accept any liability or obligation under that agreement. SL may, at the request of the Purchaser, agree to invoice the financier direct, and in that case the Purchaser expressly acknowledges that this does not affect the Purchaser's obligation to pay SL the Contract Price and that SL retains ownership of the Equipment until payment in full for the Equipment has been made to SL.
7. **PRICE VARIATION:** All prices quoted are fixed except as specified under Clauses 2,5 and 8.
8. **CUSTOMS DUTY, GST & OTHER TAXES:** Any variation in customs classification or duty rates applicable to the Equipment at date of Quotation to those in force at the time the Equipment is delivered, are payable by the Purchaser. Unless expressly stated, GST is not included in the Contract Price. GST and any variations in GST rates or any new tax or impost in addition to or in substitution for GST on the Equipment in connection with this Contract is payable by the Purchaser in addition to the Contract Price.
9. **DELIVERY:**
 - (a) **Delivery Provisions:** The delivery dates are estimates quoted in good faith based on the situation prevailing at the date of the Contract. The time given for Delivery commences from the date of receipt by SL of technically and commercially clear information required to complete Delivery and installation without interruption, including all details to enable any software to be generated.
 - (b) **Deemed Delivery:** If the Purchaser refuses or is unable to accept or permit Delivery of the Equipment or any part of the Equipment on the Delivery date, SL is entitled by notice in writing to the Purchaser to nominate a date, being not less than seven (7) days after receipt of the notice by the Purchaser, upon which the Equipment will be delivered to the Purchaser. If that Delivery is again not accepted or permitted, the Equipment is deemed to be delivered to the Purchaser for all purposes of this Contract. The deemed date of Delivery will thereafter be treated as the date of Delivery and the Parties' respective rights and obligations under this Contract will be determined as if Delivery had been effected.
 - (c) **Liability:** SL's liability for any breach of any of SL's obligations for any proven loss incurred by the Purchaser arising from causes other than Force Majeure does not extend to consequential loss and in any event is limited to the amount of \$1.00.
SL's failure to deliver the Equipment or its delay in Delivery does not entitle the Purchaser to repudiate the Contract.
10. **STORAGE:** The Purchaser must provide, free of charge to SL, ample and adequate lockable and secure storage space for any Equipment which SL delivers to the Purchaser's premises prior to commencement of installation work.
11. **INSTALLATION:** The prices for the Equipment are calculated on the basis that installation work can be performed during the hours from 7.00am to 6.00pm Monday to Friday inclusive, public holidays excepted, or other times as mutually agreed between the parties. SL must at all times during the installation period have unimpeded access to the Purchaser's premises to install and test the Equipment.
Unless specifically identified, the Contract Price does not include the cost of reticulation or facility cabling, the connection and testing of telephones or the connection of cables external to the Equipment such as street or riser cables or the provision of floor outlets, conduits, ducts or the cost of any building alteration work required. All or any such work, if required, will be subject to a separate Quotation and invoice.
12. **RISK/PROPERTY:**
 - (a) Risk in the Equipment passes to the Purchaser immediately upon Delivery;

- (b) Risk in any equipment traded in by the Purchaser remains vested in the Purchaser until that equipment is delivered to and accepted by SL;
- (c) Notwithstanding the passing of risk, ownership is reserved, and legal and equitable title to, and property in Equipment supplied, or agreed to be supplied, by SL is and remains vested in SL until payments in full have been received by SL for the Equipment and all other moneys owing by the Purchaser to SL.
- (d) Until payment in full has been received by SL, the Purchaser will clearly designate and store the Equipment, clearly identifying it as the property of SL and keep full and complete records of the physical location of each item of Equipment and the ownership of each item of Equipment by SL.
- (e) This reservation of title and ownership is effective, whether or not the Equipment has been altered from its supplied form or mixed with other Equipment. Where the Equipment is mixed with other goods and is severable but not identifiable, or incorporated with other goods into another product so that they are not severable, or in any situation where a similar dealing with the Equipment has resulted in their removal being impossible or impracticable, SL is a co owner of the mixed goods or products in proportion to the contribution made by the Equipment to such mixed goods or products.
- (f) SL is irrevocably entitled, at any time and from time to time, to inspect or to recover and retake possession of Equipment and otherwise exercise, in relation to the Equipment, any of its rights, whether those rights are as owner and/or unpaid seller or otherwise, and whether those rights are conferred by common law, contract, statute or otherwise. SL and its agents are irrevocably authorised to enter any premises of the Purchaser to remove and take possession of the Equipment and are not liable for any damage resulting from that removal.

13. **SOFTWARE:** Unless otherwise stipulated by SL, all software is supplied (in whatever form) under licence and not by way of sale and is subject:

- (a) In the case of SL's software, to SL's standard terms and conditions of licence that relate to use by Third Parties; and
- (b) In the case of other software, to terms and conditions equivalent to those agreed between SL and SL's licensor that relate to use by Third Parties.
- (c) The Customer agrees and acknowledges that any 3rd party software and/or application licenses are for their costs and accept that where required by the vendor that SL shall report license details including but not limited to numbers, usage and any other relevant data in relation to their own software and applications requested by the vendor. Where there is any discrepancy between the reported numbers and actual usage either as a result of an error or omission by either the Customer or SL the Customer shall be liable for any outstanding amount owned as a result of the error or omission.

14. **PURCHASER'S OBLIGATIONS:** The Purchaser must provide, free of charge to SL:

- (a) Commercial mains power supply and lighting as may be necessary for the installation of the Equipment; and
- (b) Any and all building alterations or modifications as may be necessary for the access, erection and installation of the Equipment.

15. **TERRITORIAL RESTRICTION:** The Purchaser must not export or use the Equipment or sell or hire the Equipment to a person who, to the Purchaser's knowledge, intends to export or use the Equipment outside of New Zealand without prior written approval of SL (which will not be unreasonably withheld).

16. **SERVICE & WARRANTY:** SL will provide warranty and/or maintenance services as shown on this Contract, as defined at Clause 18 or as otherwise specified. The service will consist of:

- (a) On-call remedial service as required due to equipment failure, except Return to Base service type.

- (b) Supply of replacement parts excluding consumables as required on an exchange basis;
- (c) Planned preventative maintenance service visits. This maintenance may be performed during a remedial maintenance call;
- (d) All labour to install parts. Note: warranty is supplied at the “standard” service type per clause 18 unless otherwise specified.

Exclusion: Services do not include: Battery and rectifier replacement, work external to the equipment (eg. Electrical); Software upgrade as a result of hardware upgrade or operating system changes by third party (eg. Microsoft, Linux, CRM); repair of damage resulting from accident, Act of God, earthquake, lightning, explosions, floods, water damage (including damaged pipes, air-conditioning and the operation of sprinklers), neglect or misuse, failure to provide the proper environment for the equipment, or failure of electrical power, use of improper supplies, causes other than ordinary use or any other cause beyond the control of SL; furnishing cables or other consumable items; painting or refurbishing the equipment; making specification changes or modifications; labour relating to relocating the equipment; adding or removing accessories; attachments or other devices; or labour rendered inappropriately as determined by SL by reason of alterations to the equipment or by reason of electrical or mechanical connections to other equipment not supplied by SL.

Batteries for all Portable Devices and Headset Amplifiers are Specifically Excluded from All Warranty Coverage.

SL reserves the right to charge the Customer for repair and adjustment required for other than normal equipment failure. If equipment shown on the face of this Contract is not covered by a current Contract or Sale Agreement, it will be inspected by SL personnel prior to the start of this Contract. Any deficiencies found will be advised to the Purchaser and corrected at the SL standard hourly rates then in effect, or those deficiencies, if not critical or safety related may be excluded from cover of this Contract.

- 17. **ACCESS TO EQUIPMENT:** SL must have full and free access to the Equipment to perform services within a safe and adequate area. This area must be kept clear and clean at all times.
- 18. **SERVICE TYPE:** SL will provide the type of service specified on the face of this Contract and as detailed below for the Purchaser’s Equipment specified in this Contract.

Service Type	Time Covered	Days Covered	Response Time
<i>Standard Business Care</i>	8.00am to 5.00pm	Monday to Friday (excluding public holidays)	Response within 4 hours
<i>Classic Business Care</i>	8.00am to 5.00pm	Every day of the year	Response within 4 hours
<i>Emergency Business Care</i>	24 hour service	Every day of the year	Response within 4 hours

<i>Premium Business Care</i>	24 hour service	Every day of the year	Non-critical components – response within 3 hours
			Critical components – response within 1 hour
<i>Pro Premium Business Care</i>	The equipment is to be returned to the location nominated by SL at the purchasers cost.		
	Within 24 hours of receipt by SL of faulty unit, a replacement will be provided.		
<i>NOTE: Remote locations may differ depending on locality and access</i>			

19. **DETERMINATION OF CONTRACT:**

1. If the Purchaser:
 - (a) fails to make payment due under the Contract; or
 - (b) fails to accept or permit delivery of the Equipment or free access to the equipment in accordance with the terms of the Contract and refuses to accept a cancellation of the Contract pursuant to Clause 4; or
 - (c) breaks any other obligation imposed on it by the Contract with SL; or
 - (d) suffers distress or permits an act of bankruptcy; or makes an arrangement with its creditors; or
 - (e) goes into liquidation (except for a solvent amalgamation or reconstruction); or
 - (f) has a Receiver appointed; then the Purchaser will be in default under the Contract.
2. If the Purchaser defaults SL may (but without prejudice to any other claim or remedy):
 - (a) suspend performance of or terminate the Contract in whole or in part;
 - (b) recover all payments for equipment or service already delivered, work in progress under the Contract at the contract rate, or if none, at a rate reasonably based on the price;
 - (c) require the Purchaser to assemble the Equipment and all documentation in respect of it and make this available at a time and place reasonably convenient to SL; or
 - (d) without giving any notice or making any demand, enter the Purchaser's premises and take possession of and remove any part of the Equipment.

20. **PURCHASE DEFAULT:** If the Purchaser defaults under Clause 4 or Clause 19 the Purchaser in addition agrees to pay SL within seven (7) days of default 15% of the Contract Price as a penalty for cancellation. Nothing in this Clause 20 limits any other right or remedy SL may have by virtue of, or arising from, any breach of the Contract.
21. **COPYRIGHT AND CONFIDENTIALITY:** The copyright in all SL's documents (including drawings) furnished to the Purchaser for the purposes of the Contract at all times remains vested in SL and neither they nor their contents may be used by the Purchaser without SL's express written consent for any purpose other than for which they were furnished.
22. **PATENT INFRINGEMENT:** If the use of the Equipment in New Zealand by the Purchaser constitutes an infringement of any patent or registered design SL will indemnify the Purchaser against any claim for infringement provided that:

- (a) The Purchaser immediately notifies SL in writing of the claim and gives SL all authority, information and assistance to defend the claim and any actions, suits or proceedings in respect of it;
 - (b) The Purchaser makes no admission of liability on its own or SL's behalf and makes no attempt to settle the claim;
SL shall not indemnify the Purchaser against any claim arising from the use or adoption by SL of patents or designs previously used by the Purchaser, the Purchaser's specific instructions to SL as to the installation of the Equipment or the use of the Equipment in connection with any other item where the use of the Equipment alone would not constitute an infringement.
20. **SEVERANCE:** Each clause and paragraph of these General Conditions is severable from the others and if any part is invalid or unenforceable for any reason, the validity or unenforceability will not prejudice or in any way affect the validity or enforceability of the remainder.
21. **FORCE MAJEURE:** If the performance of the Contract is prevented, restricted, or interfered with by reason of acts of God, riots, war, hostilities, strikes, embargoes, Acts of Government or Public Corporations, failure of shipping facilities and/or any other cause(s) beyond its reasonable control, then the party so affected, upon giving prompt notice to the other party, is excused from such performance or obligation to the extent of that prevention, restriction or interference provided that the party so affected must use its best efforts to remove those causes of non-performance and must continue performance under the Contract immediately those causes are removed.
22. **CONSUMER LEGISLATION:** Where the provisions of the Consumer Guarantees Act 1993 apply, these General Conditions will be read subject to the application of that Act and in the case of any conflict, the provisions of that Act will apply. Where the Purchaser is a business (as "business" is defined by the Consumer Guarantees Act 1993), the Purchaser agrees that it is acquiring the Equipment from SL for the purposes of a business and that the Consumer Guarantees Act 1993 does not apply.
23. **PRIVACY:** SL is authorised to obtain credit information about the Purchaser from credit referees and credit reference agencies, and is also authorised to disclose credit information to credit reference agencies or other persons seeking credit references. The credit information is collected to assist SL to ascertain the Purchaser's credit status. Failure to provide the requested information may result in credit being refused. Under the Privacy Act 2020, individuals have right of access to, and correction of, personal information.
24. **ASSIGNMENT:** The Purchaser may not assign its rights arising out of the Contract. The Purchaser agrees that SL may transfer, assign or novate its obligations under this agreement to its related company, SieTec Ltd. Subject to the foregoing, SL may not transfer, assign or novate any of its rights or obligations under this agreement without the prior consent of the Purchaser.
25. **LAW:** The Contract is governed by the laws in force for the time being in New Zealand.
26. **EXCLUSION OF LIABILITY FOR CONSEQUENTIAL LOSS:** Notwithstanding any other provision of these General Conditions in no event (whether these conditions remain in force or not) is SL liable to the Purchaser for any loss of contract, profits or business or extra operating expenses or other indirect or consequential loss whatsoever and howsoever caused.
27. **DEFINITIONS:** In these General Conditions, the following terms have the following meanings:

"Contract" means this agreement and any future agreement under which the Purchaser agrees to buy, and SL agrees to sell Equipment.

"Contract Price" means the price for the Equipment or Maintenance;

"Delivery" means delivery (or deemed delivery pursuant to Clause 9) of the Equipment to the premises nominated in the Contract or, if no such nomination is made, to the Purchaser's usual place of business;

"Equipment" means the Products and Services referred to in a Contract and any part thereof;

“General Conditions” means these General Conditions for the supply and installation of Equipment;

“Purchaser” means the company, firm or persons detailed in the Contract and includes his/its/their legal personal representatives, executors, administrators, successors and permitted assigns;

“Quotation” means the written offer by SL to the Purchaser for the supply and installation of the Equipment including all documents to which reference may properly be due in order to ascertain the rights and obligations of the parties.