

**Prepared by:**

Homa Tech

Trading as **Homatech Agency**

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# Terms of Business

Kia Ora, Welcome to Homatech

**We look forward to working with you**

All services and work provided by homatech are subjected to these terms of business.

Updated May 2025

**1. Definitions**

- 1.1 **"Charges"** means the Charges payable (including any Goods and Services Tax ("GST") where applicable) for the Services as agreed between Hoamtech and the Client in accordance with clause 5 below and shall be in New Zealand dollars (\$NZ), unless otherwise specified.
- 1.2 **"Client"** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting Hoamtech to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
  - (a) if there is more than one Client, is a reference to each Client jointly and severally; and
  - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
  - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
  - (d) includes the Client's executors, administrators, successors and permitted assigns.
- 1.3 **"Contract"** means the terms and conditions contained herein, together with any quotation, estimates, proposals or plans, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.4 **"Cookies"** means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and web site and can be accessed either by the web server or the client's computer. If the Client does not wish to allow Cookies to operate in the background when using Hoamtech's web site, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the web site, prior to making enquiries via the web site.
- 1.5 **"Prohibited Content"** means any content on any advertising media that:
  - (a) is, or could reasonably be considered to be, in breach of the Broadcasting Act 1989; the Fair-Trading Act 1986; or any other applicable law or applicable industry code; or
  - (b) contains, or could reasonably be considered to contain, any misrepresentations; or is, or could reasonably be considered to be, misleading or deceptive, likely to mislead or deceive or otherwise unlawful; or
  - (c) is, or could reasonably be considered to be, in breach of any person's Intellectual Property Rights (including, but not limited to, the distribution of music files or any other material in which the Client does not own the copyright).
- 1.6 **"Services"** means all Goods (which includes any fonts, software, licensing, content, files, information, printed or virtual material, data, hardware, software or applications (whether supplied from a third party software development company or where custom developed or programmed for the Client), brands, designs, images, graphics, pictures, trademarks, manuals, and other associated documentation and/or goods, accessories or parts) or Services (which includes any advice or recommendations, consultancy, hosting (which includes virtual server hosting, web site hosting, e-mail hosting, etc.), monitoring, data back-up or storage, design and/or web site maintenance, brands, designs, project management work, brand integration, strategising and analytical services, technical service, support and training, repairs, or installation of Goods, etc.) supplied by Hoamtech to the Client, at the Client's request, from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.7 **"Web Site"** means a location which is accessible on the Internet through the World Wide Web and which provides multimedia content via a graphical User Interface.
- 1.8 **"Hoamtech"** means Hoamtech Evolution Ltd T/A Hoamtech, its successors and assigns.

**2. Acceptance**

- 2.1 The parties acknowledge and agree that:
  - (a) they have read and understood the terms and conditions contained in this Contract; and
- 2.2 the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, pays a deposit or accepts Services provided by Hoamtech either via phone, email, text, or other digital messages.
- 2.3 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.4 These terms and conditions are meant to be read in conjunction with the terms and conditions posted on Hoamtech's Web Site and/or Hoamtech's Hire Form, and where the context so permits, the terms 'Goods or 'Services shall include any supply of Equipment, as defined therein.
- 2.5 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.6 The Client acknowledges that the supply of Goods on credit shall not take effect until the Client has completed a credit application with Hoamtech and it has been approved with a credit limit established for the account.
- 2.7 In the event that the supply of Goods request exceeds the Clients credit limit and/or the account exceeds the payment terms, Hoamtech reserves the right to refuse delivery.
- 2.8 None of Hoamtech's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of Hoamtech in writing nor is Hoamtech bound by any such unauthorised statements.
- 2.9 Once accepted by the Client, Hoamtech's quotation shall be deemed to interpret correctly the Client's instructions, whether written or verbal. Where verbal instructions only are received from the Client, Hoamtech shall not be responsible for errors or omissions due to oversight or misinterpretation of those instructions.
- 2.10 Any advice, recommendation, information, assistance, or service provided by Hoamtech in relation to Services supplied is given in good faith to the Client, or the Client's agent and is based on Hoamtech's own knowledge and experience and shall be accepted without liability on the part of Hoamtech. Where such advice or recommendations are not acted upon then Hoamtech shall require the Client or their agent to authorise commencement of the Services in writing. Hoamtech shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
- 2.11 The Client acknowledges and accepts that:
  - (a) access to Hoamtech's accounts will not be granted to the Client or the Client's IT supplier (including but not limited to, access to servers, hosting environments, marketing tools, Google, Facebook, or any other business accounts). Any updates or maintenance required to the Web Site will be conducted by Hoamtech, upon confirmation by both parties, and shall be invoiced as an extra;
  - (b) digital third-party platforms including content management system platforms, browsers, plugins or licensed products can become outdated and unsupported which are out of Hoamtech's control;

- (c) Hoamtech shall not actively conduct Services on unsupported digital third-party platforms and shall advise the Client of suitable upgrades or alternatives or in some circumstances complete short-term fixes available upon the Client's request. In the event that the Client advises Hoamtech to continue with the Services then Hoamtech shall require the Client or their agent to authorise commencement of the Services in writing. Hoamtech shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services;
  - (d) copyright is retained by Hoamtech on all design work and other Services provided by Hoamtech including text, images, ideas, visuals and illustrations unless specifically released in writing and after all costs have been settled.
- 2.12 To ensure that the Web Site functions effectively over time it is Hoamtech's recommendation that updates, and maintenance are completed annually.
- 2.13 This Contract constitutes the entire Contract between Hoamtech and the Client, and the Client hereby acknowledges that no reliance is placed on any representation made by Hoamtech, but not embodied in this Contract.
- 2.14 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

### **3. Change in Control**

- 3.1 The Client shall give Hoamtech not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address and contact phone or fax number/s, change of trustees or business practice). The Client shall be liable for any loss incurred by Hoamtech as a result of the Client's failure to comply with this clause.

### **4. Charges and Payment**

- 4.1 At Hoamtech's sole discretion the Charges shall be either:
- (a) as indicated on any invoice provided by Hoamtech to the Client; or
  - (b) Hoamtech's current price at the date of provision of the Services as indicated on Hoamtech's pricelist; or
  - (c) Hoamtech's estimated Charges (subject to clause 4.8) as the final price can only be ascertained upon completion of the Services. Variances in the estimated Charges will be subject to Client approval before proceeding with the Services; or
  - (d) Hoamtech's quoted price, estimates or proposals (subject to clause 4.8) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days;
  - (e) as per Hoamtech's set non-refundable monthly Charges for the Services ("**Plan**"), which will be as stipulated (including when due and payable) by Hoamtech in the Plan.
- 4.2 Charges in all investment estimates, quotes and proposals are estimated in New Zealand Dollars and are exclusive of GST. The Charges for the delivery of projects are estimated based on the interpretation of the scope and detail provided by the Client and are subject to change (including, but not limited to, further details being learnt and/or revealed by either party, a change in Client requirements and/or brief, rounds of amends or changes outside the original estimation, content or requests not being supplied together as a concise set, the timeframe for the project changing and/or being delayed, human errors contained in prices or specifications, supplier price changes, and exchange rate fluctuations).
- 4.3 A copy of the written estimate or quotation is to be signed and dated by the Client to indicate acceptance and should be returned to Hoamtech. As an alternative, the Client may send an official order for the Services via email in reply to the estimate or quotation which will imply the Client's acceptance of Hoamtech's terms and conditions. The Client accepts that no work will be commenced until acceptance has been supplied to Hoamtech as per this clause.
- 4.4 Where Hoamtech is requested by the Client to provide a duplicate code and/or design of the initial Web Site for the purposes of duplication on another domain then this shall be invoiced as an extra and will be calculated at twenty-five percent (25%) of the original project Charge.
- 4.5 Copies of Web Site codes for any other reason than as specified in clause 4.4 above will only be provided when the Client has met all their obligations under the Contract particularly those relating to payment.
- 4.6 The Client acknowledges and accepts that additional Charges will apply, as determined by Hoamtech, which shall be due and payable prior to the delivery of the Services, for:
- (a) packaging and supply of Web Site files or domain records for transfer; or
  - (b) Web Site hosting transfers to the new provider; or
  - (c) taking down the Web Site.
- 4.7 Unless otherwise agreed Hoamtech shall be reimbursed for all expenses reasonably and properly incurred in connection with the provision of the Services, except where such expenses are specifically stated in the Plan or in writing by Hoamtech, as being non-reimbursable. All reimbursable expenses (e.g. communications, travel expenses, etc.) will be charged at the cost involved (excluding GST) as incurred by Hoamtech.
- 4.8 *Additional and/or Varied Services:*
- (a) Hoamtech agrees that there will be no charge in the preparation of the initial quotation, which may include Client discussions, project scoping, research, testing and business analysis, etc. However, in some instances the aforementioned Services may be charged to the Client additionally (at Hoamtech's sole discretion). In the event the Client requires proofs, mock-ups, layouts, samples or dummies or printed, typewritten or other good copy and/or edits, this shall be invoiced at Hoamtech's hourly rate unless specified otherwise in the initial quotation, therefore, this variation shall be detailed on the invoice as per sub-clause (g);
  - (b) all work carried out whether experimentally or otherwise at the Client's request will be charged to the Client;
  - (c) any tabulated work and/or foreign language included in the job but not contained in the manuscript originally submitted for the purpose of estimating may be charged to the Client and shown as extras on the invoice;
  - (d) unless otherwise agreed, the Client shall bear the cost of fonts, or colour proofs, or artwork, specially bought at the Client's request for the job;
  - (e) where the performance of any Contract with the Client requires Hoamtech to obtain products and/or services from a third party, the Contract between Hoamtech and the Client shall incorporate, and shall be subject to, the conditions of supply of such products and/or services to Hoamtech, and the Client shall be liable for the cost in full including Hoamtech's margin of such products and/or services;

- (f) whilst every effort will be taken by Hoamtech to match virtual colours with physical colours, Hoamtech will take no responsibility for any variation between virtual sale samples and either the virtual sale sample displayed on the Client's computer and/or the final product. Should a physical sample be required this will be provided on request by the Client and will be charged for as an extra and charged contra against final invoice;
  - (g) Hoamtech reserves the right to amend the Charges where there is any variation to the accepted plan of scheduled Services, or instructions/specifications, which will be charged for on the basis of Hoamtech's standard hourly rates (and double such rate for any Services provided outside Hoamtech's normal business hours) and will be shown as variations on the invoice. The Client shall be required to respond to any variation submitted by Hoamtech within five (5) working days. Failure to do so will entitle Hoamtech to add the cost of the variation to the Charges. Payment for all variations must be made in full at the time of their completion.
  - (h) as a result of the timeframe for the project changing and/or being delayed;
  - (i) as a result of increases beyond Hoamtech's reasonable control in the cost of materials or labour (e.g. third-party network operator or Hoamtech's costs (e.g. google) or fluctuations in currency exchange rates, etc.). Where the Client is on a Plan, Hoamtech will provide one (1) month's written notice to the Client of any variation to the Charges thereof;
  - (j) the Client acknowledges that all Services and support for email are chargeable in addition to the Charges;
  - (k) Hoamtech shall not be held responsible for any amendments made by any third party before or after a design is published.
- 4.9 Time for payment for the Services being of the essence, the Charges will be payable by the Client on the date/s determined by Hoamtech, which may be:
- (a) on completion of the Services;
  - (b) for certain approved Client's, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
  - (c) the date specified on any invoice or other form as being the date for payment; or
  - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Hoamtech.
- 4.10 Payment may be made by cash, electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Client and Hoamtech.
- 4.11 Hoamtech may in its discretion allocate any payment received from the Client towards any invoice that Hoamtech determines and may do so at the time of receipt or at any time afterwards. On any default by the Client Hoamtech may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Hoamtech, payment will be deemed to be allocated in such manner as preserves the maximum value of Hoamtech's Purchase Money Security Interest (as defined in the PPSA) in the Goods/Services.
- 4.12 The Client shall not be entitled to set off against, or deduct from the Charges, any sums owed or claimed to be owed to the Client by Hoamtech nor to withhold payment of any invoice because part of that invoice is in dispute.
- 4.13 GST and other taxes and duties that may be applicable shall be added to the Charges except when they are expressly included in the Charges.
- 5. Design and Development Invoices and Payments**
- 5.1 In accordance with clause 4, fees for new designs and builds shall be made over three (3) payments unless otherwise agreed by both parties in writing and the following conditions may apply:
- (a) fifty percent (50%) of the contract price is payable up front and considered a non-refundable deposit;
  - (b) a payment of twenty-five percent (25%) of the contract price is payable on design approval; and
  - (c) the balance payable prior to go live of the Web Site.
- 6. Provision of the Services**
- 6.1 Each project is unique to a Client and the costings of a project are estimated and based on the requirements as defined by the Client at the initial meeting and shall include the hours and timeframe that Hoamtech envisages it will take to complete, (subject to variations as per clause 4.8).
- 6.2 Any time specified by Hoamtech for provision of the Services is an estimate only and Hoamtech will not be liable for any loss or damage incurred by the Client as a result of provision being late. However, both parties agree that they shall make every endeavour to enable the Services to be provided at the time and place as was arranged between both parties. In the event that Hoamtech is unable to provide the Services as agreed solely due to any action or inaction of the Client, then Hoamtech shall be entitled to:
- (a) charge the Client additionally for re-providing the Services at a later time and date; or
  - (b) subject to clause 27.1, terminate the Contract.
- Managing scope and assumptions**
- 6.3 All technical, mandatory requirements and assumptions are required to be clearly itemised and disclosed by the Client prior to the initiation of the project to ensure all expected features and functionality have been correctly estimated and scoped for in both investment and time required to complete the project.
- 6.4 In the event that additional work is requested or required outside of the original estimate/scope, Hoamtech has the right to re estimate the Services and timeframe required to complete the project at any stage.
- 6.5 The Client acknowledges and accepts that not all development work can or will be previewed with designs prior to development. Should any specifications be required or necessary to be met, it is required that the Client clearly communicate this to Hoamtech prior to development.
- 6.6 The Client's amends are expected to be minimum, and styling, text or content updates are to be received in batches in-line with the stage of project and the number of amends shall be stipulated in the estimate, project, or scope of the Services. If this is not identified at the time of estimating, then at least one round of amends will be adopted at the discretion of Hoamtech.
- 7. Fonts and Licensing**
- 7.1 Unless otherwise agreed and where Hoamtech has purchased fonts, software, or licensing on the Client's behalf for the provision of the Services, the Client acknowledges and accepts that all such items may be renewed as required under this Contract to ensure that Hoamtech can provide continuity in the Services. It shall be the Client's responsibility to advise Hoamtech, in advance, of any planned changes to the Services as such items are not refundable.

- 7.2 Notwithstanding and in accordance with clause 23, where Hoamtech has designed, drawn or developed Services (including the Web Site) for the Client, Hoamtech retains full intellectual property ownership of the Services, including the copyright in any designs, finalised logos, photographs, artwork, proofs and drawings and documents, work delivered in 'pitches', and Hoamtech hereby grants to the Client an irrevocable, non-exclusive and non-transferable licensing, fonts or software to use the Services solely in relation to the operation of the Client's own business, conditional upon the Client fulfilling their obligations under this Contract (including, but not limited to, the full payment of the Charges).
- 7.3 Notwithstanding clause 20 and 7.2 ownership of an all intellectual property rights in the Web Site or any other software or content developed for the Client (including, but not limited to, releasing the control of the Web Site, use of domain name or the source code of any software etc) shall be retained by Hoamtech until all amounts owing to Hoamtech have been paid in full.
- 7.4 Notwithstanding anything herein, the intellectual property rights in Hoamtech's Services do not vest in the Client and there is no assignment of these intellectual property rights to the Client. Hoamtech hereby grants to the Client an irrevocable, non-exclusive and non-transferable licence to use and reproduce the Services for the purposes of this Contract only, and solely for the operation of the Client's business however, the Client shall not use nor make copies of such intellectual property in connection with any work or business other than the work or business specified in writing to Hoamtech unless express approval is given in advance by Hoamtech. Such license shall terminate on default of payment or any other terms of this Contract by the Client.
- 7.5 Subject to the Copyright Act 1994 and the conditions therein, where Hoamtech or their subcontractor has provided the Client with a licence for use on any design, copy, writing, drawing, image, illustration, idea or code created for the Client, the licence shall be for use by the Client on a one-time only basis and may not be modified, re-used, or re-distributed in any way or form without the express permission of Hoamtech and any of its relevant subcontractors.

## **8. Product Specifications**

- 8.1 The Client acknowledges that all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in Hoamtech's or manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by Hoamtech.
- 8.2 The Client shall be responsible for ensuring that the Goods ordered are suitable for their intended use.

## **9. Design Concepts and Projects**

- 9.1 Hoamtech shall stipulate the quantity of designs to be offered as initial concepts for branding a business for the Client's consideration.
- 9.2 Any indication provided by Hoamtech as to the duration of the project shall be considered as an estimate and shall commence from the date that cleared deposit funds are received by Hoamtech.
- 9.3 Hoamtech shall not be responsible for any project over-runs regardless of the cause.
- 9.4 Hoamtech considers that the design project is accepted upon receipt of the Client's signed estimate or quotation form. Any associated services such as printing, display panel production, film work, Web Site design and development, publishing, etc. to be provided by Hoamtech or contracted on the Client's behalf shall constitute a separate project and can be treated as a separate charge.

## **10. Web Site Development**

- 10.1 *Hoamtech's Responsibilities:*
- (a) Upon acceptance of Hoamtech's quotation, and in accordance with this Contract, Hoamtech will:
- (i) use its best endeavours to develop the Web Site in accordance with the Client's instructions and specifications; and
  - (ii) to the extent specified in the Client's instructions and specifications, negotiate, and procure any third-party agreements on behalf of the Client.
- (b) The Client acknowledges that the development of the Web Site by Hoamtech is based upon current technology platforms (e.g. internet browsers, mobile, android, etc.), and therefore Hoamtech cannot guarantee that Web Site features and /or content will display correctly, and that the overall visual experience will be the same, for use by either superseded or presently undeveloped technology.
- 10.2 *Client's Responsibilities:*
- (a) The Client will, in addition to any other obligations expressed in this Contract, have the following responsibilities:
- (i) provision of all content (including data, logos, designs and/or graphic and related materials) to be incorporated into the Web Site;
  - (ii) provision of any other information, ideas or suggestions which are to be expressly considered by Hoamtech in developing the Web Site; and
  - (iii) that once approval is given for the Web Site to "Go Live" on the internet it shall be deemed completion of the project and any and all work ongoing from that point is considered ongoing maintenance subject to clause 10.5, unless otherwise agreed in advance and will be duly charged on a time-taken basis as per Hoamtech's currently hourly rate.
- (b) The Client will ensure that Hoamtech is given such information and assistance (including access to computer systems and other locations to complete a branding project) as Hoamtech reasonably requires to enable Hoamtech to construct and maintain the Web Site.
- (c) Subject to clause 26.4, the Client shall supply access to any computer system, usernames and passwords required to remove data and/or sites for failure to comply with these terms and conditions.
- (d) It shall be the Client's responsibility to ensure that any specific requirements they may have for mobile web browsers is included in the brief, as, unless otherwise specified therein, the choice of web browsers and technology used in the development of the Web Site shall be at the sole discretion of Hoamtech. In the event that additional Services are requested, or required (as per clause 10.1(b)), in order to meet any specific requirements for mobile web browsers, after Hoamtech has commenced work on the Web Site, shall be treated as a variation to the Charges, and a strict estimation of further work required shall be submitted to the Client for approval before proceeding with the variation work.
- (e) Hoamtech will not be responsible for, and accepts no liability for, any deficiency or alleged deficiency in the Web Site which is attributable to:
- (i) incorrect information provided by the Client, either pursuant to this clause or otherwise; or
  - (ii) failure by the Client to provide relevant information, either pursuant to this clause or otherwise; or

(iii) any third-party products and/or services used by Hoamtech in creation of the Web Site.

**10.3 Proof Reading:**

- (a) Whilst every care is taken by Hoamtech to carry out the instructions of the Client, it is the Client's responsibility to undertake proof reading and provide feedback (where necessary). Hoamtech shall be under no liability whatsoever for any errors not corrected by the Client during the proof reading stages, should the Client's alterations require additional proofs, this shall be invoiced as an extra;
- (b) When style, type or layout is left to Hoamtech's judgement and the Client makes further alterations, this will be invoiced as an extra.
- (c) Hoamtech will make one (1) set of minor changes at no extra cost within fourteen (14) days of the review period. Minor changes include small text changes and small adjustments to placement of items on the artwork. It does not include changes to images, colour schemes, or any navigation features. Any minor changes need to be notified to Hoamtech via email.
- (d) Should the Client fail to notify Hoamtech in writing of any amendments within fourteen (14) days from the commencement of the review period, Hoamtech shall deem that the original draft as being acceptable.

**10.4 Client's Property and Materials:**

- (a) Graphic files should be supplied in an editable, vector digital format and photographs in a high resolution digital format. If the Client chooses to purchase stock photographs, Hoamtech can suggest stock libraries.
- (b) In the case of property and materials left with Hoamtech without specific instructions, Hoamtech shall be free to dispose of them at the end of twelve (12) months after their receiving them and to accept and retain the proceeds, if any, to cover their own costs in holding and handling them.
- (c) Where materials or equipment are supplied by the Client, Hoamtech accepts no responsibility for imperfect work caused by defects in or unsuitability of such materials or equipment.

**10.5 Maintenance:**

- (a) Subject to sub-clause (b), Hoamtech will provide the Maintenance Services in accordance with the maintenance terms set out in Hoamtech's maintenance schedule.
- (b) The Client will procure all necessary authorisations, licences and consents to enable Hoamtech to have access to the Web Site in order to provide the Maintenance Services.

**11. Code Updates**

- 11.1 The Client acknowledges and accepts that in some instances Hoamtech undertakes updates or development work on the Client's Web Site including updates to the framework, code and/or plugins to the latest versions. Hoamtech will advise the Client should the updates be required, and some additional costs may apply which shall be shown as a variation in accordance with clause 4.8(g) and these costs may include legacy code conflicting with updated code.

**12. Content Management System Use**

- 12.1 The content management system of the Client's Web Site allows flexibility to manage simple content and image updates.
- 12.2 The Client acknowledges and accepts that:
  - (a) the content management system is not a total solution for updating 100% of the Client's Web Site's content;
  - (b) some areas are complex and if updated can cause major issues with the look or performance of the Client's Web Site; and
  - (c) Hoamtech recommended to only update areas the Client is familiar with and **NOT** to update the WordPress platform or plugins without prior discussions with Hoamtech.
- 12.3 If an issue arises with the Client's Web Site as a result of content management a Charge may apply to make changes and rectify any problems.

**13. WordPress & Joomla Maintenance**

- 13.1 Updates of the WordPress & Joomla Framework and plugins used within the Client's Web Site are not included in the original Web Site build price.
- 13.2 In order to keep Web Sites functioning effectively over time, Hoamtech will be in contact offering annual updates. Should the Client require these to be updated the work will be charged out as an hourly rate depending on the Client's requirements.
- 13.3 The Client should not attempt to make these updates themselves. Doing so can create errors and incur additional costs to fix.

**14. Hosting Services**

- 14.1 "Live Date" means the date in which Hoamtech provides the Hosting Services as per initial acceptance of Hoamtech's quotation.
- 14.2 Hosting Services shall only be used by the Client for lawful purposes. Any use which violates any applicable national or international laws is strictly prohibited (e.g., posting or transmitting any unlawful, threatening, abusive, libellous, defamatory, obscene, offensive, indecent, pornographic, profane, or otherwise objectionable information of any kind – including, but not limited to, any transmission constituting or encouraging conduct that would constitute a criminal offense or give rise to civil liability).
- 14.3 Hosting Services exclude domain registrations and SSL Certificates, and where the Client is changing from another hosting provider the install and set-up of the Web Site on Hoamtech's web servers, which shall be charged to the Client additionally.
- 14.4 Hoamtech will, at its sole cost and expense:
  - (a) host the Web Site on Hoamtech's web servers;
  - (b) ensure that from the Live Date:
    - (i) sufficient capacity is maintained on Hoamtech's webserver to enable users access to the Web Site in a timely manner;
    - (ii) the Web Site is accessible to users in accordance with the agreed service levels (subject to reasonable downtime for server maintenance which has been notified to the Client prior to the commencement of the downtime or (where applicable) Maintenance in accordance with clause 14.8);
  - (c) provide the Client with reasonable access to the Web Site to perform maintenance services.

**14.5 Hoamtech will not:**

- (a) alter or amend, or permit any person to alter or amend the Web Site without the written consent of the Client;
  - (b) post or display on the Web Site any advertisement, sponsorship or promotion without the written consent of the Client;
  - (c) use any user data for marketing, referral or other purposes except as expressly authorised by this Contract;
  - (d) sub-licence, rent, time-share, lease, lend or grant any rights to use the Web Site; or
  - (e) assign, transfer or authorise anyone else to exercise the rights in any licence granted pursuant to this Contract.
- 14.6 Hoamtech will make best efforts to ensure that the Client receives continual and uninterrupted Services (including network or hosting servers) during the term of this Contract, however Hoamtech does not in any way warrant or otherwise guarantee the availability of the Services, which shall be subject to regularly scheduled maintenance cycles, and many events/circumstances beyond the control of Hoamtech. In no event though, shall Hoamtech be liable to the Client for damages (including loss of income) resulting from or in relation to any failure or delay (including server downtime, programming errors, lack of connection or slow connection) of Hoamtech to provide Services under this Contract, or any loss of data, if such delays or failures are due to circumstances beyond our control. Such a failure or delay shall not constitute a default under this Contract.
- 14.7 Hoamtech may, at their sole discretion, limit or deny access to the Services is, in the judgement of Hoamtech, such limitations or denials of access are required to assure the security of the network, the integrity of the network structure, or to prevent damage to the network.
- 14.8 *Web Site Maintenance Services:*
- (a) Subject to clause (b), Hoamtech will provide the Web Site Maintenance Services in accordance with the maintenance terms set out in Hoamtech's maintenance schedule.
  - (b) The Client will procure all necessary authorisations, licences and consents to enable Hoamtech to have access to the Web Site in order to provide the Maintenance Services.
- 14.9 *Client's Obligations:*
- (a) The Client will, at its sole cost and expense:
    - (i) subject to any Contract with Hoamtech for Web Site Development, develop and maintain the Web Site;
    - (ii) provide the content to Hoamtech, in such form as reasonably prescribed by Hoamtech from time to time, and hereby grants Hoamtech a non-exclusive, worldwide, irrevocable licence to use such content for the purposes of hosting the Web Site;
    - (iii) do all things reasonably necessary to enable Hoamtech to host the Web Site on Hoamtech's webserver;
    - (iv) change the type of hosting account used if that account is deemed by Hoamtech to be unacceptable because of poor service, lack of bandwidth or in any other way insufficient to support the Web Site;
    - (v) is responsible for any fees payable and due to previous hosting organisations engaged by the Client;
    - (vi) ensure that content supplied to Hoamtech do not contain Prohibited Content, a link to any Web Site that contains Prohibited Content, or any viruses, trojan horses, worms, time bombs, cancel bots or any other software program or routine designed for or capable of interfering with the operation of the Hosting Services.
  - (b) The Client will not:
    - (i) logon to an account that the Client is not authorised to access;
    - (ii) access data or take any action to obtain services not intended for the Client;
    - (iii) attempt to probe, scan or test the vulnerability of any system, subsystem or network;
    - (iv) tamper, hack, modify or otherwise corrupt or breach security or authenticity measures without proper authorisation;
    - (v) transmit any material outlined in clause 14.9(a)(vi);
    - (vi) do anything that prevents or hinders Hoamtech from providing Hosting Services to any other person.
  - (c) The Client acknowledges that spamming (i.e. the sending of unsolicited email), email address cultivation, or any unauthorised collecting of email addresses without prior notification of the email address owner is strictly prohibited.
- 14.10 *Network Traffic:*
- (a) Network traffic shall be measured by Hoamtech and may include all forms of traffic to and from the Web Site. Hoamtech reserve the right to suspend Hosting Services (at any time and without notice to the Client) for what it deems to be excessive traffic usage.
- 14.11 *Limitation of Liability for Hosting Services*
- (a) in consideration of clause 33.3, in the event the Hosting Services provided to the Client are disrupted or malfunction for any reason, Hoamtech's liability shall be limited to damages which under no circumstances shall exceed the amount due and payable by the Client to Hoamtech for the Hosting Services during the period of disruption or malfunction.
- 14.12 Where that the Client elects to host their own Web Site, Hoamtech shall not offer any support for bug fixes nor support the code in the Web Site . In the event that the Client request Hoamtech to complete and Services to the Web Site, then Hoamtech reserves the right to charge an **access fee** as determined by Web Tech.
- 15. Search Engine Optimisation (SEO)**
- 15.1 Although Hoamtech shall use their knowledge and experience to gain the best results possible, Hoamtech gives no guarantee of the quality of visitor or the position / page rank or volume of visits to the Web Site, or warranty that the Web Site will be effective in promoting the Client's business or result in any increase in sales of the products/services of the Client. Periodic reporting will be sent to the Client's nominated email address, at the sole discretion of Hoamtech.
- 16. Domain Registration**
- 16.1 Where Hoamtech is to register a domain name on the Client's behalf, Hoamtech cannot guarantee the availability of the domain name, nor assume a successful registration or such a name.
- 17. Risk and Limitation of Liability for Client Data**
- 17.1 The Client shall provide Hoamtech with data in the following formats:
- (a) for text, files shall be in an electronic format as standard text (.txt) or Work (.doc) on a USB, CD-ROM or via email;
  - (b) for imaged, in an electronic format as prescribed by Hoamtech on a USB, CD-ROM or via email with the images of a suitable quality applicable

for the use intended and without any subsequent image processing being required. Hoamtech shall not be responsible for the quality of images scanned from printed materials;

- (c) additional expenses may be charged to the Client for any necessary action, including, but not limited to, photography and art direction, photography searches, media conversion, digital image processing or data entry services.
- 17.2 The Client acknowledges and agrees that Hoamtech shall not be held responsible or liable for:
  - (a) anything related to the Web Site, Hosting Services or any other Services provided;
  - (b) any supplied content breaching any Acts, legislation or regulations, unless due to the negligence of Hoamtech;
  - (c) any loss, corruption, or deletion of files or data (including, but not limited to software programmes) resulting from illegal hacking, third party Apps or Services provided by Hoamtech. Whilst Hoamtech will endeavour to restore the Web Site, files or data (at the Client's cost), it is the sole responsibility of the Client to back-up any data which they believe to be important, valuable, or irreplaceable prior to Hoamtech providing the Services. The Client accepts full responsibility for the Client's software and data and Hoamtech is not required to advise or remind the Client of appropriate backup procedures (unless included as part of the Services);
  - (d) any loss or damage to the Client's software or hardware caused by any 'updates' provided for that software.
- 17.3 Hoamtech, its directors, agents or employees will not be liable in any way for any form of loss or damage of any nature whatsoever suffered, whether arising directly or indirectly, by the Client or any person related to or dealing with the Client out of, in connection with or reasonably incidental to the provision of the Services by Hoamtech to the Client.
- 17.4 The Services are provided on an "as is, as available" basis. Hoamtech specifically disclaims any other warranty, express or implied, including any warranty of merchantability or fitness for a particular purpose.
- 17.5 **Public Access:**
  - (a) The Client understands that by placing information on the Web Site, such information may be accessible to all internet users. Hoamtech does not (unless expressly requested by the Client) limit or restrict access to such information, nor protect such information from copyright infringement or other wrongful activity. The Client assumes full responsibility for their use of the Services, and it is the Client's sole responsibility to evaluate the accuracy, completeness and usefulness or all opinions, advice, services, and other information, and the quality and merchantability of all Services provided by Hoamtech, or on the internet generally.

## **18. Defects, Errors, Omissions and Warranty**

- 18.1 The Client shall inspect the Goods on delivery and shall within five (5) days of delivery (time being of the essence) notify Hoamtech of any alleged defect, shortage in quantity, damage, or failure to comply with the description or quote. The Client shall afford Hoamtech an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Hoamtech has agreed in writing that the Client is entitled to reject, Hoamtech's liability is limited to either (at Hoamtech's discretion) replacing the Goods or repairing the Goods.
- 18.2 Goods will not be accepted for return other than in accordance with 18.1 above, and provided that:
  - (a) Hoamtech has agreed in writing to accept the return of the Goods; and
  - (b) the Goods are returned at the Client's cost within ten (10) days of the delivery date; and
  - (c) Hoamtech will not be liable for Goods which have not been stored or used in a proper manner; and
  - (d) 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.
- 18.3 If Hoamtech accepts that the Client is entitled to reject the Goods following their return pursuant to clause 18.2(b) Hoamtech will reimburse the Client's actual and reasonable costs of return delivery.
- 18.4 Hoamtech will not accept the return of Goods for credit.
- 18.5 For defective Services, which Hoamtech has agreed in writing that the Client is entitled to reject, Hoamtech's liability is limited to either (at Hoamtech's discretion) replacing the Services or rectifying the Services, provided that the Client has complied with the provisions of clause 18.1.
- 18.6 For Goods not manufactured by Hoamtech, the warranty shall be the current warranty provided by the manufacturer of the Goods. Hoamtech 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.

## **19. Protection of Reputation**

- 19.1 Any misuse, misrepresentation or any other action that negatively impacts Hoamtech's brand which is deemed to damage and/or tarnish the reputation of Hoamtech's brand, the Client must cease and desist from such misuse, misrepresentation or other action immediately on receipt of a written notice from Hoamtech to this effect.

## **20. Title**

- 20.1 Hoamtech and the Client agree that the Client's obligations to Hoamtech for the supply of Services shall not cease (and ownership of any Goods shall not pass) until:
  - (a) the Client has paid Hoamtech all amounts owing to Hoamtech for the Services; and
  - (b) the Client has met all other obligations due by the Client to Hoamtech in respect of all contracts between Hoamtech and the Client.
- 20.2 Receipt by Hoamtech 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, and until then Hoamtech's ownership or rights in respect of the Services, and this Contract, shall continue.
- 20.3 It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 20.1:
  - (a) the Client is only a bailee of the Goods and must return the Goods to Hoamtech on request.
  - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for Hoamtech and must pay to Hoamtech the proceeds of any insurance



in the event of the Goods being lost, damaged or destroyed.

- (c) the Client 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 Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for Hoamtech and must pay or deliver the proceeds to Hoamtech on demand.
- (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Hoamtech and must sell, dispose of or return the resulting product to Hoamtech as it so directs.
- (e) the Client irrevocably authorises Hoamtech to enter any premises where Hoamtech believes the Goods are kept and recover possession of the Goods.
- (f) Hoamtech may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Hoamtech.
- (h) Hoamtech may commence proceedings to recover the Charges notwithstanding that ownership of the Goods has not passed to the Client.

## **21. Personal Property Securities Act 1999 (“PPSA”)**

- 21.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
  - (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - (b) a security interest is taken in all Goods that have previously been provided, and that will be provided in the future by Hoamtech to the Client, and the proceeds from such Goods as listed by Hoamtech to the Client in invoices rendered from time to time.
- 21.2 The Client undertakes to:
  - (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Hoamtech may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, Hoamtech for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any registration made thereby;
  - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods or the proceeds of such Goods in favour of a third party without the prior written consent of Hoamtech; and
  - (d) immediately advise Hoamtech of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 21.3 Unless otherwise agreed to in writing by Hoamtech, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 21.4 The Client shall unconditionally ratify any actions taken by Hoamtech under clauses 21.1 to 21.3.
- 21.5 Subject to any express provisions to the contrary (including those contained in this clause 21) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

## **22. Security and Charge**

- 22.1 In consideration of Hoamtech agreeing to provide the Goods/Services, the Client 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 Client either now or in the future, and the Client grants a security interest in all of its present and after-acquired property, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s.209 of the Land Transfer Act 2017.
- 22.2 The Client indemnifies Hoamtech from and against all Hoamtech's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Hoamtech's rights under this clause.
- 22.3 The Client irrevocably appoints Hoamtech and each director of Hoamtech as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 22 including, but not limited to, signing any document on the Client's behalf.

## **23. Intellectual Property and Confidentiality**

- 23.1 All design work where there is a risk that another party makes a claim, should be registered by the Client with the appropriate authorities prior to publishing or first use or searches and legal advice sought as to its use. Hoamtech shall not be held responsible for any or all damages resulting from such claims.
- 23.2 Trademarking, protection and management of the intellectual property developed for the Client shall be the sole responsibility of the Client, Hoamtech will not be liable for any costs or losses, real or otherwise that may be incurred should the Client fail to adhere to this clause.
- 23.3 The Client hereby authorises Hoamtech to utilise images of the Services created by Hoamtech in advertising, marketing, or competition material by Hoamtech including, but not limited to:
  - (a) the Client permitting Hoamtech to place a small credit on printed material, exhibition displays, advertisement and/or link to Hoamtech's own Web Site on the Client's Web Site, which shall usually be in the form of a small logo or line of text placed towards the bottom of the page even if the Web Site is moved or transferred to another provider;
  - (b) allowing Hoamtech to place Web Sites and other designs, along with a link to the Client's Web Site on Hoamtech's own Web Site for demonstration purposes and to use any designs in Hoamtech's own publicity.
- 23.4 The Client shall indemnify Hoamtech against any claims by third parties for patent, trademark, design or copyright infringement, directly or indirectly arising out of the design, workmanship, material, construction, or use of the Services or any other deficiency therein. Where the Client has supplied drawings, sketches, files or logo's to Hoamtech, the Client warrants that the drawings, sketches, files or logo's do not breach any patent, trademark, design or copyright, and the Client agrees to indemnify Hoamtech against any action taken by a third party against Hoamtech.
- 23.5 All Flash, PHP, Java Script, HTML and Dynamic HTML coding and other supplied code (if any) remains the intellectual property of Hoamtech. Copying or disseminating the code for any purpose whatsoever is strictly forbidden and will be a breach of copyright.

- 23.6 Each party agrees to treat all information and ideas communicated to it by the other confidentially and agree not to divulge it to any third party, without the other party's written consent. The parties will not copy any such information supplied and will either return it or destroy it (together with any copies thereof) on request of the other party.
- 24. Consumer Guarantees Act 1993 and the Fair Trading Act 1986**
- 24.1 If the Client is acquiring Services for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 ("**CGA**") do not apply to the supply of Services by Hoamtech to the Client.
- 24.2 Hoamtech agrees to abide by the provisions of the Fair Trading Act ("**FTA**").
- 25. Repair Notice - 31713**
- 25.1 If the Client is a consumer within the meaning of the Consumer Guarantees Act 1993, this clause constitutes a Repair Notice given under this legislation and the Client acknowledges that:
- (a) the repair of equipment may result in the loss of any files stored on the hard drive, etc. ("**User-Generated Data**"). It is the sole responsibility of the Client to back-up any User-Generated Data which they believe to be important, valuable, or irreplaceable prior to submitting the equipment for repair; and
  - (b) equipment presented for repair may be replaced by, or repaired with, refurbished Goods of the same type rather than being repaired.
- 26. Default and Consequences of Default**
- 26.1 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 Hoamtech's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 26.2 In addition to clause 26.1 in the event that payment remains outstanding for more than thirty (30) days from the invoice due date, Hoamtech reserves the right to charge a late payment fee, exclusive of GST, which shall be payable fortnightly until the date when the payment has been received.
- 26.3 If the Client owes Hoamtech any money the Client shall indemnify Hoamtech from and against all costs and disbursements incurred by Hoamtech in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Hoamtech's collection agency fees, and bank dishonour fees).
- 26.4 Further to any other rights or remedies Hoamtech may have under this contract, if a Client has made payment to Hoamtech, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Hoamtech under this clause 25 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 26.5 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions the other party may suspend or terminate the provision of the Services to the other party, (this includes but is not restricted to, withholding domain codes, passwords and Goods, and/or blocking or restricting public and Client access to the Web Site, or removing the Web Site from the web completely). Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.
- 26.6 Without prejudice to Hoamtech's other remedies at law Hoamtech shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Hoamtech shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Hoamtech becomes overdue, or in Hoamtech's opinion the Client will be unable to make a payment when it falls due;
  - (b) the Client has exceeded any applicable credit limit provided by Hoamtech;
  - (c) the ownership or effective control of the Client is transferred or the nature of the Client's business is materially altered;
  - (d) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (e) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 27. Cancellation and Termination**
- 27.1 If Hoamtech, due to reasons beyond Hoamtech's reasonable control, is unable to deliver any Services to the Client, Hoamtech may cancel any Contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are delivered by giving written notice to the Client. On giving such notice Hoamtech shall repay to the Client any money paid by the Client for the Services. Hoamtech shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 27.2 The Client may cancel delivery of the Goods and/or Services by written notice served within twenty-four (24) hours of placement of the order. Failure by the Buyer to otherwise accept Delivery of the Goods and/or Services shall place the Buyer in breach of this Contract.
- 27.3 Where the Client cancels an order:
- (a) the initial notification may be by telephone or email but must be confirmed in writing within fourteen (14) days;
  - (b) the Client shall be invoiced for all work completed over and above the non-refundable deposit as per clauses 4.9 and 5.1;
  - (c) where failure clause 27.3(a) occurs, shall place the Client in breach of this Contract.
- 27.4 Should the Client, for any reason, cause the Services to be delayed for more than three (3) months after the acceptance date, this Contract will be terminated by Hoamtech (at their sole discretion) and all Services completed, but not billed or paid, will be payable in full within fourteen (14) days from the date of the submitted invoice.
- 27.5 If the Client fails to comply with any of the provisions of this Contract and does not rectify such non-compliance within seven (7) days of Hoamtech giving notice either in writing, via fax or email, then Hoamtech may without prejudice to any other rights or remedies, and without being liable to the Client for any loss or damage that may result, give notice to the Client terminating their right to use the Web Site, Software and Services. Upon termination of the Contract, the Client shall lose all right to use the Web Site and products, and shall forthwith deliver the Goods to Hoamtech and destroy all copies made. The Client shall certify in writing that the copies have been destroyed.
- 27.6 Cancellation of orders for Goods made to the Client's specifications will definitely not be accepted once production has commenced, or an order

- has been placed.
- 27.7 In the event the Client transfers their services to another provider and cancels the Contract in accordance with this clause, it shall be the Client or the Client's third-party provider's responsibility to provide Hoamtech with written confirmation that the transfer has been completed. Hoamtech shall, upon receipt of the confirmation, terminate the Services
- 27.8 Upon termination of this Contract, Hoamtech will immediately delete all files and content relating to the Client and the Services provided thereto.
- 27.9 It is the Client responsibility to make arrangements for the transfer of their data prior to the termination date. Hoamtech accepts no liability for any loss or damage incurred by the Client as a result of the deletion of such data.
- 27.10 In the event the Services are terminated as per clauses 27.1 or 27.5, the Services can be re-instated under a new contract at the prevailing rates; however no credits or discounts will be granted and reinstatement costs shall apply.
- 27.11 *Fixed Term Contracts*
- (a) where this Contract relates to a fixed term Contract, all payments shall fall due as per the payment schedule. To terminate the fixed term Contract on, or after, the current annual term, the Client must give Hoamtech not less than twenty (20) working days' notice prior to the current anniversary date of this Contract. The Services will then terminate at the end of the then current annual term. If the Client does not terminate the Services on expiry of the current annual term, the Services shall revert to a month-by-month basis charge until otherwise agreed by both parties. Any additional Services shall become due and payable until notice (as herein) is received.
- 27.12 In the event of the premature termination of this fixed term Contract (including by notification from the Client, (at least twenty (20) working days prior to the expiration date of the Contract term), or as a result of default, but excluding any breach or termination of this Contract by the Hoamtech):
- (a) the Client shall be responsible for the immediate payment of the following sums:
- (i) all monies due and payable up to the date of termination, noting applicable rates may change if the Plan is shorter than that noted in the quotation; and
- (ii) all other sums owing by the Client under this Contract (or any other Contract with the Client) as a result of the default and termination of this Contract, including consequential damages and any and all loss of profits, costs, charges and expenses incurred by Hoamtech in connection with (and resulting from) the premature termination of this Contract, which shall be calculated at a minimum of thirty percent (30%) of the remainder of the Charges under this Contract where a fixed term applies.
- 28. Privacy Policy**
- 28.1 All emails, documents, images or other recorded information held or used by Hoamtech is "**Personal Information**" as defined and referred to in clause 28.3 and therefore considered confidential. Hoamtech acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines as set out in the Act. Hoamtech acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by Hoamtech that may result in serious harm to the Client, Hoamtech will notify the Client in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Client by written consent, unless subject to an operation of law.
- 28.2 Notwithstanding clause 28.1, privacy limitations will extend to Hoamtech in respect of Cookies where the Client utilises Hoamtech's Web Site to make enquiries. Hoamtech agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
- (b) tracking Web Site usage and traffic; and
- (c) reports are available to Hoamtech when Hoamtech sends an email to the Client, so Hoamtech may collect and review that information ("collectively Personal Information")
- If the Client consents to Hoamtech's use of Cookies on Hoamtech's Web Site and later wishes to withdraw that consent, the Client may manage and control Hoamtech's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 28.3 The Client authorises Hoamtech or Hoamtech's agent to:
- (a) access, collect, retain and use any information about the Client;
- (i) including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice for the purpose of assessing the Client's creditworthiness; or
- (ii) for the purpose of marketing products and services to the Client.
- (b) disclose information about the Client, whether collected by Hoamtech from the Client directly or obtained by Hoamtech from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 28.4 Where the Client is an individual the authorities under clause 28.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 28.5 The Client shall have the right to request (by e-mail) from Hoamtech, a copy of the Personal Information about the Client retained by Hoamtech and the right to request that Hoamtech correct any incorrect Personal Information.
- 28.6 Hoamtech will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 28.7 The Client can make a privacy complaint by contacting Hoamtech via e-mail. Hoamtech will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Privacy Commissioner at <http://www.privacy.org.nz>.
- 29. Service of Notices**
- 29.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this Contract;

- (c) by sending it by registered post to the address of the other party as stated in this Contract;
- (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
- (e) if sent by email to the other party's last known email address.

29.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

### **30. Trusts**

- 30.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust or as an agent for a trust ("Trust") then whether or not Hoamtech may have notice of the Trust, the Client covenants with Hoamtech as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust, the trustees and the trust fund;
  - (b) the Client has full and complete power and authority under the Trust or from the Trustees of the Trust as the case maybe to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust, the trustees and the trust fund.. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
  - (c) the Client will not during the term of the Contract without consent in writing of Hoamtech (Hoamtech will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;
    - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
    - (ii) any alteration to or variation of the terms of the Trust;
    - (iii) any advancement or distribution of capital of the Trust; or
    - (iv) any resettlement of the trust fund or trust property.

### **31. Unpaid Seller's Rights**

- 31.1 Where the Client has left any item with Hoamtech for repair, modification, exchange or for Hoamtech to perform any other service in relation to the item and Hoamtech has not received or been tendered the whole of any monies owing to it by the Client, Hoamtech shall have, until all monies owing to Hoamtech are paid:
- (a) a lien on the item; and
  - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 31.2 The lien of Hoamtech shall continue despite the commencement of proceedings, or judgment for any monies owing to Hoamtech having been obtained against the Client.

### **32. Dispute Resolution**

- 32.1 Hoamtech and the Client will negotiate in good faith and use their reasonable efforts to settle any dispute that may arise out of, or relate to, this Contract, or any breach thereof. If any such dispute cannot be settled amicably through ordinary negotiations, the dispute shall be referred to the representatives nominated by each party who will meet in good faith in order to attempt to resolve the dispute. Nothing shall restrict either party's freedom to commence legal proceedings to preserve any legal right or remedy or protect and proprietary or trade secret right.

### **33. General**

- 33.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality, and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 33.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Palmerston North Courts in New Zealand.
- 33.3 Subject to the CGA, the liability of Hoamtech and the Client under this Contract shall be limited to the Charges.
- 33.4 Hoamtech may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent provided the assignment does not cause detriment to the Client.
- 33.5 The Client cannot licence or assign without the written approval of Hoamtech.
- 33.6 Hoamtech may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of Hoamtech's sub-contractors without the authority of Hoamtech.
- 33.7 The Client agrees that Hoamtech may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for Hoamtech to provide Goods and/or Services to the Client.
- 33.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns or outage of any telecommunications links or other connections forming part of the Internet which are beyond the reasonable control of either party. This clause does not apply to a failure by the Client to make any payment due to Hoamtech, following cessation of a Force Majeure.
- 33.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.