Ginko IT

GENERAL TERMS AND CONDITIONS

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ABOUT THESE TERMS

HOW TO READ THIS DOCUMENT

These are the general terms on which Wiseman Tech Pty Ltd, trading as Ginko IT, supplies goods and services. They apply alongside your Quote and any Plan Schedule.

We have tried to write them in plain English. Where a word is capitalised it has the meaning given to it in clause 1.

The parts most people want to find:

- **How long am I committed for, and how do I leave?** Clauses 3 and 4.
- **What can the price do?** Clause 12.
- **What happens if something goes wrong?** Clauses 17 and 21.
- **What do you do with my data?** Clauses 23 and 24.
- **What are you insured for?** Clause 26.
- **How do I log a job?** Appendix A.

Nothing in these terms takes away rights you have under the Australian Consumer Law, or under the New Zealand Consumer Guarantees Act and Fair Trading Act where those apply. If any term conflicts with those rights, those rights win.

If a term does not work for your business, tell us before you sign. These terms are our standard position, not a condition of talking to us.

Ginko IT

GENERAL

1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions, the Rate Schedule, and every Quote, Order, Plan, contract or other arrangement in connection with the supply of Goods or Services by Wiseman Tech Pty Ltd trading as Ginko IT, the following words have the following meanings:

"After Hours" means any time that is not within Business Hours.

"Agreement" means these Conditions together with the Quote, any Plan Schedule and the Rate Schedule that apply to you.

"Business Day" means a day that is not a Saturday, Sunday or Public Holiday.

"Business Hours" means 08:30 to 17:00 on a Business Day.

"Client", **"You"** or **"Your"** means a person who seeks or obtains a Quote for, or who orders, Goods or Services from Us. It includes a person whose name is on the Order, a person who places an Order, a person on whose behalf an Order is placed or appears to be placed, and in each case their successors and permitted assigns.

"Conditions" means these terms and conditions.

"Confidential Information" means information disclosed by one party to the other that is not public, including your business information and your customer and employee data, and our pricing, methods, proposals and documentation.

"Goods" means any goods supplied by Us, including computer hardware and Software.

"GST" has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

"Initial Term" has the meaning given in clause 3.1.

"Order" means any order placed by You with Us for Goods or Services, in any form.

"Period" means a number of half-days, days, weeks, fortnights, months or any other period agreed between Us and You as the period during which some Services will be provided.

"Personal Information" has the meaning given to it in the *Privacy Act 1988* (Cth) and, for a Client in New Zealand, "personal information" as defined in the Privacy Act 2020 (NZ).

"Plan" means an arrangement between Us and You for Services and/or Goods provided on an ongoing basis, as set out in a Plan Schedule.

"Plan Schedule" means the terms applicable to a particular Plan, including its scope, inclusions, exclusions and any service levels.

"Public Holiday" means a day gazetted as a public holiday in the Australian state or territory, or the region of New Zealand, in which the Services are principally provided.

"Quote" means a quote provided to You by Us.

"Rates" means the charges for Goods and Services set out in the Rate Schedule, a Plan, a Plan Schedule, a Quote or these Conditions, including call-out fees and Return/Cancellation Fees.

"Rate Schedule" means our schedule of rates and charges, as varied under clause 12.

"Renewal Term" has the meaning given in clause 3.2.

"Return/Cancellation Fee" means a fee charged under clause 12.5.

"Service Request" means a request for service, such as adds, moves, changes and technical assistance.

"Services" means any services provided by Us, including Work, advice and recommendations.

"Software" includes software and any installation, update, associated software and any services provided in connection with those things.

"Term" means the Initial Term together with any Renewal Term then current.

"Third Party Subscription" means any licence, subscription or service supplied by a third party that We resell or arrange for You, including Microsoft 365, Microsoft Azure and similar cloud services.

"Us", **"Our"** or **"We"** means Wiseman Tech Pty Ltd trading as Ginko IT, ABN 35 613 164 631, and its successors and permitted assigns.

"Work" means anything We do, provide, customise, produce or acquire in connection with You or Your use or benefit, including testing, troubleshooting, installation and configuration of equipment or software, consulting, scoping, planning, documenting and quoting.

1.2 In this Agreement, unless the contrary intention appears:

1.2.1 the singular includes the plural and vice versa;

1.2.2 a reference to a gender includes every other gender;

1.2.3 a reference to an Act, statute or regulation includes any amendment in force at the relevant time and any Act, statute or regulation enacted in substitution for it;

1.2.4 headings and bold text are for convenience only and do not affect interpretation;

1.2.5 a reference to dollars ($) is to Australian dollars, unless the Quote states otherwise;

1.2.6 a reference to a time is to the time in Melbourne, Victoria;

1.2.7 a reference to a person includes a corporation, partnership, joint venture, association, authority, trust, state or government, and vice versa;

1.2.8 a reference to a clause, schedule, annexure or exhibit is to a clause, schedule, annexure or exhibit of this Agreement;

1.2.9 a schedule, annexure or description of the parties forms part of this Agreement;

1.2.10 a reference to a document is to that document as amended, novated, supplemented or replaced from time to time;

1.2.11 where an expression is defined, another grammatical form of that expression has a corresponding meaning;

1.2.12 "includes" means includes without limitation; and

1.2.13 a reference to bankruptcy or winding up includes bankruptcy, winding up, liquidation, dissolution, becoming an insolvent under administration, being subject to administration, and anything analogous or having a substantially similar effect under the law of any applicable jurisdiction.

2. APPLICATION OF THESE CONDITIONS

2.1 Unless We agree otherwise in writing, these Conditions are incorporated into, and apply to, every Quote, Order, Plan, contract or other arrangement for the supply of Goods or Services by Us to You.

2.2 If there is any inconsistency, the following order of precedence applies, with the first listed prevailing: the Quote, then the Plan Schedule, then these Conditions, then the Rate Schedule.

2.3 If any provision of this Agreement is invalid or unenforceable, it may be severed without affecting the validity or enforceability of the remaining provisions.

3. TERM AND RENEWAL

3.1 **Initial Term.** Unless the Quote says otherwise, Services supplied under a Plan are supplied for an initial term of twelve (12) months, beginning on the first day of the month after the date You accept the Quote (the **Initial Term**).

3.2 **Automatic renewal.** At the end of the Initial Term, and at the end of each renewal term after it, this Agreement renews automatically for a further twelve (12) months (each a **Renewal Term**), unless either party gives the other written notice of non-renewal at least sixty (60) days before the end of the then-current Term.

3.3 **We will remind you.** We will write to You at least ninety (90) days before the end of each Term to tell You the date the Term ends, the date by which notice of non-renewal must be given, and any change to the Rates that will apply if it renews. If We fail to give that reminder, You may give notice of non-renewal at any time up to thirty (30) days after We do give it, and that notice takes effect at the end of the then-current Term.

3.4 **Late notice.** Notice of non-renewal given later than sixty (60) days before the end of a Term is effective at the end of the next Renewal Term.

3.5 **Rates on renewal.** We may change the Rates that apply from the start of a Renewal Term, provided the change is set out in the reminder given under clause 3.3. If You do not accept the change, You may give notice of non-renewal under clause 3.2.

3.6 **Third Party Subscriptions have their own terms.** Third Party Subscriptions are supplied on the terms of the vendor, not these Conditions. Those terms usually include their own committed term, their own renewal date and a short cancellation window — for example, Microsoft's new commerce subscriptions are generally committed for the full term after the first seven days. Those dates will not always line up with the Term of this Agreement. Before You commit to a Third Party Subscription, We will tell You its term and what happens if You cancel it early. If this Agreement ends while a Third Party Subscription is still within its own committed term, You remain responsible for the charges for the remainder of that committed term.

4. ENDING THIS AGREEMENT

4.1 **At the end of a Term.** Either party may end this Agreement at the end of the Initial Term or any Renewal Term by giving notice of non-renewal under clause 3.2. No reason is needed and no early termination charge applies.

4.2 **For material breach.** Either party may end this Agreement immediately by written notice if the other party:

4.2.1 materially breaches this Agreement and does not remedy the breach within thirty (30) days after receiving written notice describing the breach and requiring it to be remedied; or

4.2.2 materially breaches this Agreement in a way that cannot be remedied.

4.3 **Insolvency.** Either party may end this Agreement immediately by written notice if the other party becomes bankrupt or is wound up, or ceases or threatens to cease carrying on business.

4.4 **Non-payment.** We may suspend or end this Agreement for non-payment in accordance with clause 30.

4.5 **Early termination by You for convenience.** If You end this Agreement before the end of the Term for any reason other than under clauses 4.2 or 4.3, You must pay the recurring charges that would have fallen due for the remainder of the then-current Term. Charges for work that has not been performed and for Goods that have not been supplied are not payable.

4.6 **Helping You leave.** Whether this Agreement ends by non-renewal, breach or otherwise, We will help You move to another provider. Within thirty (30) days of the end date, or another period We agree, We will:

4.6.1 provide a current copy of Your documentation, including network diagrams, asset and licence inventories, and configuration records We hold for You;

4.6.2 provide administrative credentials for systems We administer on Your behalf, or transfer ownership of those systems to You or a provider You nominate;

4.6.3 return or, at Your direction, securely delete Your data held by Us, in a commonly readable format; and

4.6.4 answer reasonable questions from Your new provider.

We will do the things in clauses 4.6.1 to 4.6.3 at no charge. Time beyond that, including project work to migrate systems, is charged at the Rates. We will not withhold Your data, credentials or documentation because of a dispute, except for amounts properly due and unpaid where We have given You fourteen (14) days written notice of our intention to do so.

4.7 **What survives.** Clauses 21, 23, 24, 30, 31, 33 and 34 survive the end of this Agreement, together with any other clause that by its nature is intended to survive.

5. REPRESENTATIONS AND ENTIRE AGREEMENT

5.1 This Agreement records the entire agreement between Us and You about its subject matter and replaces anything said or written before it.

5.2 You acknowledge that no employee or agent of Ours has authority to make any representation, warranty or promise about the supply of Goods or Services other than as contained in this Agreement.

5.3 Clause 5.1 does not limit either party's liability for fraud or for any statement made fraudulently.

6. NOTICES

6.1 A notice under this Agreement must be in writing and sent by email:

6.1.1 to You, at the email address You last notified to Us for this purpose or, if none, the email address on Your most recent Order; and

6.1.2 to Us, at notices@ginko.com.au, which is monitored and raises a ticket.

6.2 A notice sent by email is taken to be received at the time it enters the recipient's mail system, unless the sender receives an automated message that it was not delivered. A notice received after 17:00 on a Business Day, or on a day that is not a Business Day, is taken to be received at 09:00 on the next Business Day.

6.3 A notice of non-renewal under clause 3.2, or of termination under clause 4, must say clearly that it is such a notice.

7. GOVERNING LAW

7.1 This Agreement is governed by the laws of Victoria, Australia, and the parties submit to the non-exclusive jurisdiction of the courts of Victoria.

7.2 Clause 7.1 does not deprive a Client in New Zealand of the protection of any New Zealand law that applies regardless of the parties' choice of governing law. See clause 35.

8. ASSIGNMENT

8.1 Neither party may assign its rights or obligations under this Agreement without the other party's prior written consent, which must not be unreasonably withheld.

8.2 Despite clause 8.1, either party may assign this Agreement to a purchaser of its business, or to a related body corporate, on written notice to the other party.

9. CHANGES TO THESE TERMS

9.1 We may change these Conditions from time to time. We will give You at least thirty (30) days written notice of a change before it takes effect, and will publish the changed Conditions on Our website.

9.2 If a change materially disadvantages You, You may end this Agreement by giving Us written notice within thirty (30) days after receiving notice of the change. If You do, the Agreement ends on the date the change was to take effect, the change does not apply to You, and clause 4.5 does not apply.

9.3 We will not change these Conditions in a way that increases the Rates. Rates are dealt with under clauses 3.5 and 12.

GOODS AND SERVICES

10. QUOTES

10.1 **Validity.** A Quote is valid for seven (7) days unless it says otherwise. A Quote is an offer by Us that You may accept within that period.

10.2 **How a contract is formed.** A contract is formed when You accept a Quote in writing, including by approving it electronically, and We confirm acceptance of the resulting Order under clause 11.4.

10.3 **Expired Quotes.** After a Quote expires We may withdraw or re-price it without notifying You. If You want to proceed after expiry, ask Us to reissue it.

10.4 **Changes You request.** If You ask for changes to a Quote and We agree to them, the price may change. A revised Quote supersedes the earlier one.

10.5 **Basis of the Quote.** A Quote is based on the specifications given to Us and the costs applying when it is issued. Prices are based on the Quote being taken as a whole.

10.6 **Price and supply movements.** If, before You accept a Quote, the cost or availability of Goods changes for reasons outside Our control, We may vary or withdraw the Quote. If We vary it, We will tell You what changed and why, and You are free not to proceed. Once You have accepted a Quote and We have confirmed the Order, the price is fixed, except where clause 10.7 applies.

10.7 **Goods We do not hold.** We do not hold stock. Where Goods are ordered in for You, price and availability are confirmed by Our supplier when the Order is placed. If Our supplier's price has increased by more than 10% since the Quote, We will tell You before proceeding and You may cancel that item at no cost.

10.8 **Substitutions.** If Goods become unavailable, We will offer a substitute of equal or better specification at no higher price. You are not obliged to accept a substitute.

10.9 **Delivery estimates.** Delivery dates given by Us come from Our suppliers and are estimates, not promises.

10.10 **Freight.** Freight is added to the Order unless the Quote says otherwise. Quoted freight is an estimate.

10.11 **Discounts.** Where a special price or discount has been applied to a Quote, no other promotion, discount or bonus offer applies to it.

10.12 **Warranty on Goods.** Unless the Quote says otherwise, Goods carry the manufacturer's warranty for parts and labour on a return-to-base basis. This does not limit Your rights under clause 20.3.

10.13 **Turnaround.** We aim to action a request for a Quote within one (1) Business Day. Tell Us if it is urgent.

11. ORDERS

11.1 **Placing an Order.** You may place an Order by returning a completed order form, or by approving a Quote by email or through Our online system, giving the date, Your full legal name and any ABN, ACN or NZBN, the name of any person on whose behalf the Order is placed, Your address, and the relevant Quote number and date.

11.2 **Signing.** You must sign the Order or have it signed on Your behalf, unless it is sent by email or submitted through Our online system, in which case it is treated as signed by the person who sent the email or submitted the form.

11.3 **Apparent authority.** Unless We actually know otherwise, We may rely on the apparent validity of an Order. A person who signs, sends or submits an Order warrants that it is authorised by them and by the person on whose behalf it is placed.

11.4 **Acceptance.** An Order has no effect until We accept it in writing.

11.5 **Payment before delivery.** Where We have not extended credit terms to You, We are not obliged to place or deliver an Order until We have received payment in cleared funds for the Order and any freight, delivery and in-transit insurance costs. If We are unwilling or unable to complete an Order, We will refund any payment You have made for it.

11.6 **Credit checks.** You consent to Us carrying out a credit reference check on You for the purpose of deciding whether to extend credit or payment terms.

11.7 **Cancelling an Order.** You may cancel an Order only if We agree in writing. Once a manufacturer or supplier has despatched Goods — which often happens the same day We place the Order — cancellation is generally not possible. A Return/Cancellation Fee may apply under clause 12.5.

11.8 **Our processes.** We follow documented processes for providing Services and supplying Goods. You agree to co-operate with those processes as advised to You from time to time.

12. PRICING AND RATES

12.1 **GST.** All Rates and amounts quoted are exclusive of GST and any other applicable taxes or government charges unless We state otherwise in writing. Where GST applies, You must pay it in addition, on receipt of a valid tax invoice. Whether a supply to a Client

outside Australia is GST-free depends on the law at the time; We will state the treatment on the invoice.

12.2 **Paying the Rates.** You must pay for Goods and Services at the Rates set out in the applicable Plan, Quote and Rate Schedule.

12.3 **Rates are fixed during a Term.** The Rates for Services under a Plan are fixed for the Initial Term and for each Renewal Term. We may change them with effect from the start of a Renewal Term under clause 3.5.

12.4 **Ad hoc and project Rates.** Rates for work outside a Plan may be varied on thirty (30) days written notice. The Rates that apply to a quoted project do not change once the Order is accepted.

12.5 **Pass-through of vendor increases.** Where a vendor increases the price of a Third Party Subscription during a Term, We may pass that increase on, at cost and without margin uplift, on thirty (30) days written notice. If the increase to Your total monthly charges is more than 20%, You may cancel the affected subscription at the end of its own committed term without an early termination charge.

12.6 **Call-out fees.** Call-out fees may be charged in addition to the Rates. The amount depends on where the Services are provided and is set out in the Rate Schedule.

12.7 **Return/Cancellation Fee.** Where We arrange a return or refund for You, or where You cancel an Order after We have accepted it, We may charge a fee to cover Our actual administration costs. We may deduct it from any money otherwise refundable to You. We will tell You the amount before You commit to the return or cancellation.

12.8 **Expenses.** You must pay reasonable out-of-pocket expenses We incur in providing the Services, including travel, flights, car hire, fuel, taxi fares, accommodation and meals, tolls and parking. We will obtain Your written approval before incurring any expense over $250.

12.9 **Separate charging.** We may charge for Goods separately from Services, or together.

12.10 **Time increments.** Attended work is charged in increments of fifteen (15) minutes. Where work occupies part of an increment, the whole increment is charged.

12.11 **Pre-paid blocks of Service.** Where You buy a pre-paid block of Service for a Period, payment is made in advance at the applicable Rate, less any discount agreed in writing. Services drawn from a block are calculated using the minimum periods and increments in the Rate Schedule. Unused hours in a block expire at the end of the Period and are not refundable, except that We will carry unused hours forward into the next Period where You buy a further block before the Period ends.

13. SERVICES AND PLANS

13.1 **What is included.** The Services included in Your Plan, and anything expressly excluded, are set out in the Plan Schedule. Work outside that scope is charged at the Rates unless We agree otherwise in writing.

13.2 **Changes to a Plan.** We may change the scope or terms of a Plan with effect from the start of a Renewal Term, by setting the change out in the reminder given under clause 3.3. During a Term, We may change a Plan only:

13.2.1 by written agreement with You;

13.2.2 where the change is required by law, or by a vendor whose product the Service depends on, in which case We will give You as much notice as We reasonably can; or

13.2.3 where the change improves the Service and does not increase the Rates or reduce what You receive.

13.3 **Withdrawing a Service.** If We decide to stop offering a Service, We will give You at least ninety (90) days written notice. You may then end the affected Service without an early termination charge.

13.4 **Copies on request.** We will give You a copy of the current Rate Schedule on request. Plan Schedules are provided to Clients on the relevant Plan.

14. SUBCONTRACTING

14.1 We may subcontract any part of the Services, but We remain responsible to You for their performance as if We had performed them Ourselves.

14.2 We will tell You before We engage a subcontractor who will have access to Your systems or Your data, and clause 23.5 applies to any disclosure of Personal Information outside Australia.

15. DELIVERY, TITLE, RISK AND SECURITY INTERESTS

15.1 **Delivery.** We will use reasonable endeavours to despatch Goods by the estimated date. We are not liable for delay caused by circumstances beyond Our reasonable control, including supplier and carrier delays.

15.2 **Accepting delivery.** You must be available to accept Goods at Your nominated address during Business Hours unless otherwise arranged.

15.3 **Risk.** Risk in the Goods passes to You on delivery to Your nominated address. This does not affect title.

15.4 **Insurance.** You must keep the Goods adequately insured from delivery until title passes.

15.5 **Retention of title.** Title to the Goods stays with Us until We have received payment in full and cleared funds for them. Until then You must:

15.5.1 hold the Goods as Our fiduciary bailee;

15.5.2 keep the Goods identifiable as Ours where it is practical to do so; and

15.5.3 if You dispose of the Goods in breach of this clause, hold the proceeds on trust for Us in a separate account.

15.6 **Security interest under the PPSA.** You acknowledge that this Agreement creates a security interest in the Goods, and in their proceeds, in favour of Us for the purposes of the *Personal Property Securities Act 2009* (Cth) (**PPSA**). You:

15.6.1 consent to Us registering that security interest on the Personal Property Securities Register, and agree to promptly do anything We reasonably ask to enable Us to register and maintain a perfected security interest;

15.6.2 waive Your right to receive a verification statement under section 157 of the PPSA; and

15.6.3 agree that, to the extent permitted, sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA do not apply, and that You waive Your rights under sections 142 and 143.

15.7 **Repossession.** Where title has not passed and an amount is overdue, We may, after giving You five (5) Business Days written notice, enter premises where the Goods are located at a reasonable time to recover them, and You authorise Us to do so. We will take reasonable care to avoid damage and will make good any damage We cause. This clause does not authorise entry to residential premises without consent or a court order.

15.8 This clause does not limit any other right We have to recover money owed.

16. RETURNS AND CLAIMS FOR GOODS

16.1 **Supplier policies.** Goods are supplied subject to the returns and claims policies of the relevant manufacturer or supplier. We will tell You what those are on request.

16.2 **Goods that cannot be returned.** Goods that are customised for You, ordered specially, sourced from overseas, or that the manufacturer or supplier will not accept back, cannot be returned or cancelled except where clause 16.4 or clause 20.3 applies.

16.3 **Inspecting Goods.** Please inspect Goods on delivery and tell Us within seven (7) days of anything wrong. That helps Us make a claim on the supplier while it is still open. Failing to tell Us within seven (7) days does not affect any right You have under clause 20.3 or under any manufacturer's warranty.

16.4 **Condition of returned Goods.** Where You are entitled to return Goods, they must be returned in their original condition and packaging, except that Goods which turn out to be faulty or not as described may be returned once opened.

16.5 **Return costs.** You pay the reasonable costs We incur in arranging a return, unless the manufacturer or supplier pays them, or the return arises from a fault in the Goods or Our error.

17. WHAT WE CAN AND CANNOT PROMISE

17.1 **How We will work.** We will provide the Services with the due care and skill of a competent IT services provider, using appropriately skilled people.

17.2 **Diagnosis involves trial and error.** You acknowledge that diagnosing and resolving faults in computer systems often involves testing possibilities in circumstances that are novel or not fully known, and that a test, recommendation or fix may prove incorrect. That does not by itself mean We have failed to meet clause 17.1.

17.3 **Reasonable assistance.** Where a Plan includes assistance without a stated limit, We are obliged to provide assistance that is reasonable in the circumstances. Reasonable assistance is normally work done during Business Hours within the time We have estimated for it. Work beyond that is charged at the Rates, and We will tell You before We exceed the estimate.

17.4 **Third party products.** Where We recommend Goods or Third Party Subscriptions supplied by others:

17.4.1 We will tell You the basis of the recommendation and any material limitation We are aware of;

17.4.2 We do not control how a third party's product behaves in Your environment, how it interacts with other products, or what support the vendor provides; and

17.4.3 You remain responsible for deciding whether to follow the recommendation, and We recommend You obtain independent advice where the decision is significant.

17.5 **Paying for Services that do not achieve an outcome.** Unless We have expressly agreed a fixed outcome in writing, Services are provided on a time and materials basis, and are payable whether or not a particular outcome is achieved, provided We have met

clause 17.1. Where We have expressly agreed a fixed outcome, We must achieve it.

17.6 **Following instructions.** You agree to follow reasonable instructions from Us about testing or troubleshooting. Where those do not resolve the problem, We will allocate the resources We reasonably consider appropriate.

18. FORCE MAJEURE

18.1 Neither party is liable for a failure or delay in performing its obligations, other than an obligation to pay money, to the extent it is caused by something beyond its reasonable control, including failures by third parties to supply goods, services or transport, stoppages, fire, flood, earthquake, pandemic, acts of God, strikes, lock-outs, war, riot, civil commotion, action by a public authority, explosion, accident, or a failure of a public telecommunications or cloud service.

18.2 The affected party must tell the other as soon as practicable and use reasonable efforts to work around the event.

18.3 If the event continues for more than sixty (60) days, either party may end this Agreement by written notice, and clause 4.5 does not apply.

19. PRODUCT SPECIFICATIONS

19.1 We may supply Goods with minor variations in dimensions and specifications where the manufacturer changes them after the Order date and before delivery, provided the Goods remain fit for the purpose You told Us about.

19.2 If We cannot supply the Goods ordered, We may offer an alternative of equal or better quality at no higher price. You are not obliged to accept it.

20. WARRANTIES

20.1 **Manufacturer warranties.** Goods usually carry a manufacturer's warranty. We will tell You what it covers and will help You make a claim under it.

20.2 **Our role in a claim.** We are not the manufacturer and do not control whether a manufacturer honours its warranty. Where You ask Us to pursue a manufacturer's warranty claim on Your behalf, We will do so with reasonable care. Substantial time spent on a claim that does not arise from Our error is charged at the Rates, and We will tell You before We start charging.

20.3 **Your rights that cannot be excluded.** Our Goods and Services come with guarantees that cannot be excluded under the Australian Consumer Law, including guarantees of acceptable quality, fitness for a disclosed purpose, and that Services will be provided with due care and skill. Those guarantees apply to goods and services costing less than $100,000 whether or not they are acquired for business use. Nothing in this Agreement excludes, restricts or modifies them. For a Client in New Zealand, see clause 35.

21. LIABILITY

21.1 **Rights that cannot be excluded.** Nothing in this clause excludes, restricts or modifies any right or remedy that cannot be excluded under the Australian Consumer Law, the New Zealand Consumer Guarantees Act 1993 or Fair Trading Act 1986 where they apply, or any other law.

21.2 **Where We can limit our liability.** Where a guarantee implied by law can be limited rather than excluded, Our liability for breach of it is limited, at Our election, to:

21.2.1 replacing the Goods or supplying equivalent Goods;

21.2.2 repairing the Goods;

21.2.3 paying the cost of replacing the Goods or acquiring equivalent Goods;

21.2.4 paying the cost of having the Goods repaired; or

21.2.5 supplying the Services again, or paying the cost of having them supplied again.

21.3 **Cap on liability.** Subject to clauses 21.1 and 21.5, each party's total liability to the other arising out of or in connection with this Agreement, whether in contract, tort (including negligence), under statute or otherwise, is limited in aggregate to the greater of $20,000 and the total charges paid by You to Us under this Agreement in the twelve (12) months immediately before the event giving rise to the liability.

21.4 **Indirect loss.** Neither party is liable to the other for indirect or consequential loss, or for loss of profit, revenue, anticipated savings, business opportunity or goodwill, however caused. This does not apply to Your obligation to pay amounts properly due.

21.5 **What the cap does not cover.** Clauses 21.3 and 21.4 do not apply to:

21.5.1 liability for death or personal injury caused by a party's negligence;

21.5.2 fraud or wilful misconduct;

21.5.3 a breach of clause 33 (confidentiality);

21.5.4 Your obligation to pay amounts properly due under this Agreement; or

21.5.5 a party's liability to indemnify the other for a third party claim that its own intellectual property infringes the rights of that third party.

21.6 **Backups and data.** You are responsible for maintaining backups of Your programs and data, except to the extent backup is an included Service under Your Plan Schedule. Where backup is an included Service, We are responsible for performing it in accordance with clause 17.1 and the Plan Schedule, and clause 21.3 applies to Our liability if We fail to do so.

21.7 **Mitigation.** Neither party is liable for loss the other party could have avoided by taking reasonable steps.

22. ERRORS AND OMISSIONS

22.1 We make every effort to ensure prices and descriptions are correct. Where there is a genuine and obvious error, We may rescind the affected contract by written notice to You, even if We have accepted Your Order or received payment. Our liability in that case is limited to refunding the money You have paid, and We will tell You as soon as We become aware of the error.

OUR RESPONSIBILITIES

23. PRIVACY AND PERSONAL INFORMATION

23.1 **Why We collect it.** We collect Your Personal Information to provide Quotes, fulfil Orders and supply Goods and Services to You, and to manage Our relationship with You (**Authorised Purposes**). If You do not provide it, We may not be able to supply the Goods or Services.

23.2 **How We handle it.** We handle Personal Information in accordance with the Australian Privacy Principles in the *Privacy Act 1988* (Cth), whether or not We are required by that Act to do so, and in accordance with Our Privacy Policy at ginko.com.au/privacy.

23.3 **Your clients' and staff data.** In the course of supplying the Services We will have access to Personal Information about Your customers, staff and contacts. We handle that information only on Your instructions and for the Authorised Purposes, we do not use it for any other purpose, and We do not sell or disclose it for marketing.

23.4 **Who We disclose it to.** We may disclose Personal Information to suppliers, manufacturers and subcontractors where that is necessary to fulfil an Order or provide the Services, and where required or authorised by law. Otherwise We will not disclose it without Your consent.

23.5 **Where it is held.** Personal Information is held at Our principal place of business and in the cloud services We use to deliver the Services. Some of those services store data outside Australia. We will tell You, on request, which of them do and in which countries, and We will take reasonable steps to ensure any overseas recipient handles the information consistently with the Australian Privacy Principles.

23.6 **Access and correction.** You may ask Us to access or correct Personal Information We hold about You by contacting Us at the address in clause 6.

23.7 **Accuracy.** We rely on You to give Us correct information. You may incur additional charges if We act on information that is wrong.

24. DATA SECURITY AND DATA BREACHES

24.1 **Reasonable steps.** We will take reasonable steps to protect data We hold or access on Your behalf from misuse, interference, loss and unauthorised access, modification or disclosure, using measures appropriate to its sensitivity.

24.2 **Telling You about a breach.** If We become aware of unauthorised access to, or disclosure or loss of, data We hold or access on Your behalf, We will:

24.2.1 tell You as soon as reasonably practicable and in any event within seventy-two (72) hours of becoming aware of it;

24.2.2 tell You what We know about what happened, what data is involved and what We are doing about it;

24.2.3 take reasonable steps to contain it; and

24.2.4 give You the reasonable assistance You need to meet Your own obligations, including under the Notifiable Data Breaches scheme in Part IIIC of the *Privacy Act 1988* (Cth) or, for a Client in New Zealand, the notifiable privacy breach provisions of the Privacy Act 2020 (NZ).

24.3 **Who notifies.** Where the data is Yours, You decide whether a notification to a regulator or to affected individuals is required and You make it, unless We are separately required by law to notify. We will not notify Your customers or staff about an incident without telling You first, unless the law requires Us to.

24.4 **Your obligations.** You must tell Us promptly if You become aware of a security incident affecting systems We support, and follow Our reasonable instructions to contain it.

25. OUR WEBSITE

25.1 We make no representation that information on Our website is complete or current, that the website will be continuously available, or that it will be free from delay, virus, communications failure or malfunction.

25.2 Links to third party sites on Our website are not an endorsement of those sites or of any product or service on them.

26. INSURANCE

26.1 We maintain, at Our own expense, the following insurance with reputable insurers:

26.1.1 public and products liability insurance, for not less than AUD $5,000,000 for any one occurrence, and in the aggregate in respect of product liability arising out of the provision of information technology;

26.1.2 professional indemnity insurance, for not less than AUD $5,000,000 for any one claim and in the aggregate; and

26.1.3 cyber liability insurance, for not less than AUD $500,000 in the aggregate.

26.2 We will give You certificates of currency evidencing that cover within thirty (30) days of the start of this Agreement, at each renewal of the policies, and at other times You reasonably ask.

26.3 We will tell You if any of that cover lapses or is materially reduced.

YOUR RESPONSIBILITIES

27. LODGING SERVICE REQUESTS

27.1 So that We can provide the Services, You agree to lodge Service Requests using the process in Appendix A.

28. ACCESS TO SYSTEMS, SITES AND PEOPLE

28.1 You agree to give Us the access to equipment, sites and people that We reasonably need to provide the Services, when We need it.

28.2 **Monitoring and remote access software.** You agree to Us installing software on Your equipment that lets Our technicians monitor system health, collect diagnostic information, and access and control devices remotely. This may require devices to be left on overnight or at weekends.

28.3 **Telling Your people.** That software can capture information about how Your staff use their devices, and lets Us view a screen and take control of it. You are responsible for telling Your staff that it is installed and what it can do, and for meeting any obligation You have under privacy or workplace surveillance law in Your state, territory or country. We will tell You what the software can do and will help You explain it.

28.4 **Attended access.** Where practical, We will seek the user's agreement before taking control of a device they are using.

29. THIRD PARTY AUTHORISATIONS

29.1 We may need to deal with Your other providers on Your behalf, such as Your internet provider or a software vendor. Some require Your authorisation before they will deal with Us. It is Your responsibility to put that authorisation in place, and We will tell You what is needed.

30. PAYMENT, LATE PAYMENT AND DEFAULT

30.1 **When payment is due.** Invoices are payable within the terms stated on the invoice or, if none is stated, within fourteen (14) days of the invoice date.

30.2 **Disputed invoices.** If You dispute an invoice in good faith, You must tell Us in writing within fourteen (14) days of the invoice date, giving reasons, and pay the undisputed part by the due date. We will not suspend Services or charge interest on an amount genuinely in dispute while We are working through it.

30.3 **Suspension.** Where an undisputed invoice is more than fourteen (14) days overdue, We may suspend the supply of Goods and Services after giving You seven (7) days written notice. We will not suspend Services where doing so would create a risk to safety, and We will restore them promptly on payment.

30.4 **Recovery costs.** Reasonable legal and other costs We incur in recovering overdue amounts are payable by You in addition to the amount owed.

30.5 **Acceleration.** If You default in payment of an invoice and do not remedy it within fourteen (14) days of written notice, amounts that would have become due later become immediately due and payable. Together, these amounts are a **Sum Due**.

30.6 **Interest.** We may charge interest on a Sum Due at the Reserve Bank of Australia cash rate plus 4% per annum, calculated daily from the due date until payment. We will not charge interest on an amount disputed under clause 30.2 unless the dispute is resolved in Our favour.

30.7 **How payments are applied.** Payments are applied first to recovery costs, then to interest, then to the oldest outstanding invoice.

30.8 **Security.** We may ask You to provide reasonable security for a Sum Due, or as a condition of continuing to supply Goods or Services on credit.

30.9 **Payment arrangements.** If We agree a repayment arrangement and a payment under it is missed, We may again suspend supply under clause 30.3.

30.10 **Other remedies.** Nothing in this clause limits any other remedy available to Us.

31. NON-SOLICITATION OF EMPLOYEES

31.1 Our people are how We deliver the Services, and replacing one is expensive. During this Agreement and for twelve (12) months after it ends, You agree not to employ or engage, or to solicit for employment or engagement, any of Our employees or contractors who have worked on Your account, without Our written consent.

31.2 Clause 31.1 does not apply where the person responds to a general advertisement not directed at Our people, or where We have ended their engagement.

31.3 If You breach clause 31.1, You agree to pay Us thirty per cent (30%) of the person's total annual remuneration in their first year with You, as a genuine pre-estimate of Our cost of recruiting and training a replacement. The parties agree this is a reasonable estimate and not a penalty.

32. SOFTWARE AND LICENSING

32.1 **Licences are Yours.** Software licences used in Your business are held by You and are Your responsibility, including keeping records of them. This includes Software We install for You. We will keep a licence inventory as part of the Services where Your Plan Schedule says so.

32.2 **Telling Us what You hold.** You must tell Us what licences You hold, and must not ask Us to install Software You are not licensed to use. We may decline to install Software where We are not satisfied it is properly licensed.

32.3 **Your indemnity.** You indemnify Us against any claim arising from unauthorised use of Software by You, or from Us installing Software at Your request that You were not licensed to use, except to the extent the claim arises from Our own breach of this Agreement or Our negligence.

32.4 **Third party software faults.** We are not responsible for defects in software supplied by third parties, but We will help You pursue the vendor.

33. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

33.1 **Your material.** You warrant that material You give Us is Yours to give, or that You have the right to give it to Us. You indemnify Us against claims that Our use of it as directed by You infringes a third party's rights.

33.2 **Our material.** Intellectual property in Work We create in providing the Services, and in Our methods, tools, templates and documentation, remains Ours.

33.3 **Your licence to use what We build.** Where You have paid for it, We grant You a perpetual, worldwide, non-exclusive, royalty-free licence to use, copy and modify any Work We create specifically for You, for Your own internal business purposes, including after this Agreement ends. This does not extend to Our general tools, templates or methods used across Our client base, and does not permit You to resell it.

33.4 **Documentation is Yours to keep.** Documentation We prepare about Your environment — network diagrams, asset registers, licence inventories, configuration records and passwords — is provided for Your use and You may keep and use it after this Agreement ends.

33.5 **Confidentiality.** Each party must keep the other's Confidential Information confidential, use it only for the purposes of this Agreement, and take reasonable steps to prevent unauthorised disclosure, including by its staff and contractors. This obligation continues for three (3) years after this Agreement ends, and indefinitely for Personal Information and for anything identified as a trade secret.

33.6 **Exceptions.** Clause 33.5 does not apply to information that is public other than through a breach of this Agreement, was already known to the recipient without an obligation of confidence, is independently developed, or must be disclosed by law — and in that last case the disclosing party must, where lawful, tell the other party first.

34. RESOLVING DISPUTES

34.1 If a dispute arises, the party raising it must tell the other in writing, setting out what it is about and what outcome is sought.

34.2 Within ten (10) Business Days, a senior representative of each party must meet — in person, by phone or by video — and try in good faith to resolve it.

34.3 If it is not resolved within twenty (20) Business Days of the notice, either party may refer it to mediation administered by the Resolution Institute, with the mediator and the mediator's fees shared equally.

34.4 Neither party may start court proceedings about a dispute until this clause has been followed, except for urgent injunctive relief or to recover an undisputed debt.

34.5 Each party must keep performing its obligations while a dispute is being resolved.

NEW ZEALAND AND APPENDIX

35. CLIENTS IN NEW ZEALAND

35.1 This clause applies where You are a Client in New Zealand, and prevails over any inconsistent term.

35.2 **Your rights under New Zealand law.** Nothing in this Agreement excludes, restricts or modifies rights You have under the Consumer Guarantees Act 1993 or the Fair Trading Act 1986 that cannot be excluded. Where You acquire the Goods or Services for the purposes of a business and it is fair and reasonable to do so, the parties agree that the Consumer Guarantees Act does not apply, to the extent section 43(2) of that Act permits.

35.3 **Privacy.** We handle personal information about Your staff, customers and contacts in accordance with the Information Privacy Principles in the Privacy Act 2020 (NZ), and clause 24 applies to a notifiable privacy breach under that Act as it does to an eligible data breach in Australia.

35.4 **GST and currency.** Amounts are quoted and invoiced in New Zealand dollars unless the Quote states otherwise, and are exclusive of New Zealand GST.

35.5 **Public holidays and hours.** Business Hours are determined by reference to public holidays in the region of New Zealand where the Services are principally provided.

35.6 **Personal property securities.** Clause 15.6 applies as if the references to the *Personal Property Securities Act 2009* (Cth) and the Personal Property Securities Register were references to the Personal Property Securities Act 1999 (NZ) and the New Zealand Personal Property Securities Register.

APPENDIX A — SERVICE REQUEST LODGEMENT

How to lodge a Service Request

Use one of these two methods:

- **Phone:** 1300 650 757 (or +61 3 9088 2451 from New Zealand or overseas)
- **Email:** support@ginko.com.au

Include a short description of the problem and any screenshots of errors — it genuinely speeds up the fix.

If You lodge by phone or from an email address We do not recognise, include Your name, company and contact details.

Please don't contact technicians directly. A request sent to a technician's personal email, mobile or chat is not logged, is not visible to anyone else, and will not be picked up if they are away or on another job. It also interrupts the job they are working on.

Outside Business Hours

A Service Request that needs attention outside Business Hours must be lodged **by phone**. After-hours charges apply. Requests lodged by email or the portal outside Business Hours are picked up on the next Business Day.

Where Your Plan Schedule sets target response times, those apply. Where it does not, We respond as soon as We reasonably can, prioritising by business impact.