

SAM COMPUTER SYSTEMS – STANDARD TERMS

1 APPLICATION

- 1.1 These Terms apply to the provision of any Software, Hardware and Services by SAM (as defined below). By placing an Order with SAM, the Customer agrees to these Terms.
- 1.2 The Agreement between the parties is formed when SAM notifies the Customer by email that SAM accepts the Customer's Order, or commences supplying the relevant Software, Hardware and/or Services to the Customer, whichever is the earlier (**Order Acceptance**).
- 1.3 On Order Acceptance, each Order forms a separate Agreement between the parties.
- 1.4 The Agreement comprises:
 - a these Terms, including the Schedule;
 - b if the Services include Support Services, the Service Level Agreement; and
 - c the Order.
- 1.5 The Agreement applies to the exclusion of any standard terms the Customer may have for the purchase of goods or services and any terms included, or incorporated by reference, in any request for quote, purchase order or other correspondence between the parties.
- 1.6 If there is any conflict between the documents that form part of the Agreement, they will have precedence in the descending order of priority set out below:
 - a these Terms;
 - b the Service Level Agreement (if applicable); and
 - c the Order.

2 CHANGES

- 2.1 SAM may change these Terms or the Service Level Agreement at any time by notifying the Customer of the change by email or by posting a notice on the Website. Unless stated otherwise, any change takes effect from the date set out in the notice. The Customer is responsible for ensuring it is familiar with the latest Terms and Service Level Agreement. The Customer will be bound by the changed Terms and/or Service Level Agreement if, from the date on which the Terms are changed, the Customer:
 - a continues to access and use Hosting Services, SaaS Services or support services; or
 - b places an Order with SAM.
- 2.2 **These Terms were last updated on 27/04/2020**

3 INTERPRETATION

In these Terms:

Agreement means these Terms (including the Schedule), the Service Level Agreement (if applicable) and the Order.

Business Hours means 07:30 – 17.30 NZST (or, for Customers outside New Zealand, 07:30 – 20:00 NZST) on Business Days.

Business Days means Monday to Friday, other than any public holiday in [Auckland,] New Zealand.

Charges means:

- ▲ subject to clause 9.2, the applicable fees set out in the order form or a quote issued by SAM; or
- ▲ if SAM has not issued an order form or quote, SAM's standard charges or price as at the time of supply,

in each case, as may be updated from time to time in accordance with clause 9.9.

Confidential Information means any information that is not public knowledge and that is obtained from the other party in the course of, or in connection with, the provision and use of the Service. SAM's Confidential Information includes Intellectual Property owned by SAM (or its licensors), including the SAM Software and the Documentation. The Customer's Confidential Information includes the Data (if applicable).

Customer means the customer placing the Order.

Data means all data, content, and information (including personal information) owned, held, used or created by the Customer or on its behalf that is stored using, or inputted into, the Software.

Delivery has the meaning given in clause 8.4. Other grammatical forms of that term have consistent meanings.

Documentation means the specifications, technical guides, user manuals and other written materials [accessible at [insert link] or otherwise] provided by SAM relating to the Software, Hardware and/or Services.

Force Majeure means an event that is beyond the reasonable control of a party, excluding:

- ▲ an event to the extent that it could have been avoided by a party taking reasonable steps or reasonable care; or
- ▲ a lack of funds for any reason.

Hosted Software means Software that SAM hosts for the Customer.

Hosting Services means hosting of Software by SAM.

including and similar words do not imply any limit.

Intellectual Property Rights includes copyright and all rights existing anywhere in the world conferred under statute, common law or equity relating to inventions (including patents), registered and unregistered trade marks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity.

Intellectual Property has a consistent meaning, and includes any enhancement, modification or derivative work of the Intellectual Property.

Licensed SAM Software has the meaning given in clause 5.2.

Objectionable includes being objectionable, defamatory, obscene, harassing, threatening, harmful, or unlawful in any way.

Order Acceptance has the meaning given in clause 1.2.

Order means:

- ▲ an ordering document issued by SAM and signed or submitted to SAM by the Customer;
- ▲ a quote issued by SAM and accepted by the Customer; and
- ▲ any other request by the Customer for SAM to supply Software, Hardware or Services.

a *party* includes that party's permitted assigns.

Permitted Users means the Customer's personnel who are authorised to access and use the Service on the Customer's behalf in accordance with clause 6.6.

a *person* includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a government department, or any other entity.

personal information means information about an identifiable, living person.

personnel includes officers, employees, contractors and agents, but a reference to the Customer's personnel does not include SAM.

SaaS Services means Software provided on a software-as-a-service basis.

SAM means SAM Computer Systems Limited, company number 895865.

SAM NZTA Data Retrieval Service means the service described in the Schedule.

SAM Software means software owned by SAM or any other company in the TSI Group.

Service Level Agreement means SAM's service level agreement at *[insert]*.

Services means Hosting Services, SaaS Services, support services and any other services set out in an Order.

Software means the SAM Software and/or Third Party Software set out in an Order.

Support Charges means the Charges payable for Support.

Support Services means support for the Software, the SaaS Services, and/or the Hosting Services, as further described in the Order and the Service Level Agreement.

Terms means these terms titled *SAM Computer Systems Standard Terms*.

Territory means, unless otherwise specified in the Order, the country in which the Customer is incorporated.

Third Party Software means Software that is not SAM Software.

TSI Group means TSI Group Holdings Limited, company number 3799445 and its related companies (as that term is defined in the Companies Act 1993).

Underlying Systems means the Software, IT solutions, systems and networks (including software and hardware) used to provide Hosting Services or SaaS Services, including any third party solutions, systems and networks.

Words in the singular include the plural and vice versa.

A reference to a statute includes references to regulations, orders or notices made under or in connection with the statute or regulations and all amendments, replacements or other changes to any of them.

4 PROVISION OF SOFTWARE, HARDWARE AND SERVICES

4.1 In consideration for payment of the Charges, SAM:

- a where the Order states that the Customer is purchasing or renting Software, licenses that Software to the Customer in accordance with clause 5;
- b where the Order states that the Customer is purchasing Hosting Services or SaaS Services, will provide the Hosting Services or SaaS Services to the Customer in accordance with clause 6;
- c where the Order states that the Customer is renting SAM Software, purchasing Hosting Services or SaaS Services or subscribing to Support Services, will provide Support in accordance with clause 7;
- d where the Order states that the Customer is purchasing or renting Hardware, will sell or rent that Hardware to the Customer in accordance with clause 8; and
- e will provide the other Services set out in the Order,

in each case, in accordance with the Agreement.

4.2 SAM must use reasonable efforts to provide the Services:

- a in accordance with the Agreement and New Zealand law;
- b exercising reasonable care, skill and diligence; and
- c using suitably skilled, experienced and qualified personnel.

4.3 The Customer must:

- a permit SAM's personnel to have access to the Customer's premises to provide the Services during normal business hours or at such other times as the parties agree, subject to SAM and its personnel complying with the Customer's security, health and safety and other applicable polices notified by the Customer to SAM;
- b perform all tasks, functions and responsibilities set out in an order form or quote or otherwise reasonably requested by SAM in a timely manner, and supply sufficient suitably skilled resources and personnel for this purpose;
- c promptly make decisions (including approvals) and provide SAM with all information reasonably required to provide the Services;
- d before using the SAM NZTA Data Retrieval Service, sign and return to SAM a copy of the terms of use set out in the Schedule; and
- e when using the SAM NZTA Data Retrieval Service, comply with the terms of use set out in the Schedule.

4.4 SAM's provision of the Software, Hardware and Services to the Customer is non-exclusive. Nothing in the Agreement prevents SAM from providing the Software, Hardware or Services to any other person.

5 SOFTWARE LICENCES

5.1 This clause 5 applies if the Order states that the Customer is purchasing or renting Software.

5.2 SAM grants to the Customer, and the Customer accepts, a non-exclusive and non-transferable licence to use the SAM Software described in the Order as being purchased or rented (**Licensed SAM Software**) and the Documentation for that Software solely:

- a for the Customer's lawful internal business purposes;
- b by the number of concurrent users specified in the Order;
- c within the Territory; and
- d on the terms and conditions of the Agreement.

5.3 For SAM's Orion Dealer Management System Software, the ongoing payment of the Support Charges is a condition of the licence. SAM reserves the right to suspend or withdraw the licence in the event of non-payment of Support Charges.

- 5.4 For SAM's SAM Workshop Management System, Support Services are optional for the Lite, Workmate, Supermate versions and mandatory for the Elite version. Access to some software features and functions (eg: WOF Checksheets) is restricted to customers who are subscribed to Support Services. Refusal or cancellation of Support Services may result in access to these features being removed (for a list of affected functions, contact SAM's support centre).
- 5.5 For rental Licensed SAM Software, the ongoing payment of the rental Charges is a condition of the licence.
- 5.6 To prevent fraudulent use, Licensed SAM Software periodically expires and requires the entry of a re-activation code. Re-activation is controlled centrally from an SAM server and is usually automatic. If any amount payable by the Customer is overdue, SAM may require payment of the overdue amount prior to providing a renewal codes. This service is provided at no charge to legitimate users.
- 5.7 The Customer must:
- a use the Licensed SAM Software and its Documentation for lawful purposes only and must not copy (except making a single copy for the Customer's own back-up purposes), reproduce, translate, decompile, reverse-engineer, resell, modify, vary, sub-license or otherwise deal in the Licensed SAM Software or its Documentation except:
 - i as expressly provided for in the Agreement; or
 - ii to the extent expressly permitted by any law or treaty that is in force in the Territory where that law or treaty cannot be excluded, restricted or modified by the Agreement;
 - b use the Licensed SAM Software on several desktop/laptop computers provided that the Licensed SAM Software is not installed on more than 1 file server or server instance
 - c allow SAM to access Licensed SAM Software to inspect that Software and verify compliance with the licence term in this clause 5;
 - d ensure the Licensed SAM Software and its Documentation are protected at all times from misuse, damage, destruction or any form of unauthorised use, copying or disclosure;
 - e maintain all proprietary notices on the Licensed SAM Software and its Documentation; and
 - f not transfer, assign or otherwise deal with or grant a security interest in the Licensed SAM Software, its Documentation or the Customer's rights under this clause 5.
- 5.8 If any Third Party Software is described in the Order as being purchased or rented, that Software will be licensed on the terms set out in the relevant licensor's licence agreement, which the Customer will be required to accept prior to installation. The Customer must comply with the terms of that licence agreement.

- 5.9 Unless otherwise agreed by SAM in writing:
- a the minimum term for Software rental is 6 months; and
 - b after the completion of the minimum term, Software rental can be cancelled by either party on not less than 90 days' notice.

6 HOSTING AND SAAS SERVICES

- 6.1 This clause 6 applies if the Order states that the Customer is purchasing Hosting Services or SaaS Services.
- 6.2 Subject to clause 6.3, and unless otherwise specified in the Order, SAM must use reasonable efforts to ensure the Hosted Software or SaaS Services are available during Business Hours . However, it is possible that on occasion the Hosted Software or SaaS Services may be unavailable to permit maintenance or other development activity to take place, or in the event of Force Majeure. SAM must use reasonable efforts to notify advance details of any unavailability to the Customer by email and/or through its status notification web page <http://sam.co.nz/about/system-status>
- 6.3 Through the use of web services and APIs, the Hosted Software or SaaS Services may interoperate with a range of third party service features (**Third Party Features**). SAM does not make any warranty or representation on the availability of those Third Party Features. Without limiting the previous sentence:
- a if a Third Party Feature provider ceases to provide that feature or ceases to make that feature available on reasonable terms, SAM may cease to make the relevant Third Party Feature available to you. If SAM ceases the availability of a Third Party Feature:
 - i where SAM is charging the Customer a fee for that Third Party Feature as a separate item from the Charges for the Hosting Services or SaaS Services, SAM will cease charging you that fee, with effect from the date SAM ceases the availability of the Third Party Feature; and
 - ii no other refund, discount or other compensation will be payable by SAM; and
 - b if a Third Party Feature provider changes the terms on which it provides that feature to SAM, SAM may change these Terms as it considers necessary to reflect that change in accordance with clause 2.1.
- 6.4 The Customer and its personnel must:
- a use the Hosted Software and SaaS Services in accordance with the Agreement solely for:
 - i the Customer's own internal business purposes; and
 - ii lawful purposes; and

- b not resell or make available Hosted Software or SaaS Services to any third party, or otherwise commercially exploit the Hosted Software or SaaS Services.
- 6.5 When accessing the Hosted Software or SaaS Services, the Customer and its personnel must:
- a not impersonate another person or misrepresent authorisation to act on behalf of others or SAM;
 - b when sending bulk or commercial email, comply with:
 - i all applicable laws, including the Unsolicited Electronic Messages Act 2007; and
 - ii the most recent version of [The Marketing Association of New Zealand's Best Practice Guidelines for Email Marketing](#).
 - c correctly identify the sender of all electronic transmissions;
 - d not attempt to undermine the security or integrity of the Underlying Systems;
 - e not use, or misuse, the Hosted Software or SaaS Services in any way which may impair the functionality of the Underlying Systems or impair the ability of any other user to use the Hosted Software or SaaS Services;
 - f not attempt to view, access or copy any material or data other than:
 - i that which the Customer is authorised to access; and
 - ii to the extent necessary for the Customer to use the Hosted Software or SaaS Services in accordance with the Agreement; and
 - g neither use Hosted Software or SaaS Services in a manner, nor transmit, input or store any Data, that breaches any third party right (including Intellectual Property Rights and privacy rights) or is Objectionable, incorrect or misleading; and
 - h comply with any other reasonable policy or condition notified by SAM to the Customer.
- 6.6 Without limiting clause 6.5, no individual other than a Permitted User may access or use the Service. The Customer may authorise any member of its personnel to be a Permitted User, in which case the Customer must provide SAM with the Permitted User's name and other information that SAM reasonably requires in relation to the Permitted User. The Customer must procure each Permitted User's compliance with clauses 6.4 and 6.5.
- 6.7 A breach of any of the Agreement by the Customer's personnel (including, to avoid doubt, a Permitted User) is deemed to be a breach of the Agreement by the Customer.
- 6.8 The Customer is responsible for procuring all licences, authorisations and consents required for the Customer and its personnel to use Hosted Software or SaaS Services, including to use, store and input Data into, and process and distribute Data through, the Hosted Software or SaaS Services.

- 6.9 Title to, and all Intellectual Property Rights in, the Data (as between the parties) remains the Customer's property. The Customer grants SAM a worldwide, non-exclusive, fully paid up, transferable, irrevocable licence to use, store, copy, modify, make available and communicate the Data for any purpose in connection with the exercise of SAM's rights and performance of its obligations in accordance with the Agreement.
- 6.10 The Customer acknowledges that:
- a SAM may require access to the Data to exercise its rights and perform its obligations under the Agreement; and
 - b to the extent that this is necessary but subject to clause 11, SAM may authorise a member or members of its personnel to access the Data for this purpose.
- 6.11 The Customer must arrange all consents and approvals that are necessary for SAM to access the Data as described in clause 6.10.
- 6.12 The Customer acknowledges and agrees that:
- a SAM may:
 - i use Data and information about the Customer's and its personnel's use of the Hosted Software and SaaS Services to generate anonymised and aggregated statistical and analytical data (**Analytical Data**);
 - ii use Analytical Data for its internal research and product development purposes and to conduct statistical analysis and identify trends and insights; and
 - iii supply Analytical Data to third parties;
 - b SAM's rights under clause 6.12a above will survive termination of expiry of the Agreement; and
 - c title to, and all Intellectual Property Rights in, Analytical Data is and remains SAM's property.
- 6.13 The Customer acknowledges and agrees that to the extent Data contains personal information, in collecting, holding and processing that information through the Hosted Software or SaaS Services, SAM is acting as the Customer's agent for the purposes of the Privacy Act 1993 and any other applicable privacy law. The Customer must obtain all necessary consents from the relevant individual to enable SAM to collect, use, hold and process that information in accordance with the Agreement.
- 6.14 While SAM will take standard industry measures to back up all Data stored using the Hosted Software or SaaS Services, the Customer agrees to keep a separate back-up copy of all Data uploaded by the Customer onto the Hosted Software or SaaS Services.

- 6.15 If the Customer is located outside New Zealand, the Customer agrees that SAM may store Data (including any personal information) in secure servers in New Zealand and may access that Data (including any personal information) in New Zealand from time to time.
- 6.16 The Customer indemnifies SAM against any liability, claim, proceeding, cost, expense (including the actual legal fees charged by SAM's solicitors) and loss of any kind arising from any:
- a breach of clause 6.4 or 6.5; or
 - b actual or alleged claim by a third party that any Data stored using the Hosted Software or SaaS Services infringes the rights of that third party (including Intellectual Property Rights and privacy rights) or that the Data is Objectionable, incorrect or misleading.
- 6.17 Unless otherwise specified in an order form or quote issued by SAM or agreed by SAM in writing:
- a the minimum term for Hosting Services and SaaS Services is 6 months; and
 - b after the completion of the minimum term, the Hosting Services or SaaS Services can be cancelled by either party on not less than 90 days' notice.
- 6.18 At any time prior to one month after the date of termination or Hosting Services, SaaS Services or the Agreement, the Customer may request:
- a a copy of any Data stored using the Hosted Software or SaaS Services, provided that the Customer pays SAM's reasonable costs of providing that copy. On receipt of that request, SAM must provide a copy of the Data in a common electronic form. SAM does not warrant that the format of the Data will be compatible with any software; and/or
 - b deletion of the Data stored using the Hosted Software or SaaS Services, in which case SAM must use reasonable efforts to promptly delete that Data.

To avoid doubt, SAM is not required to comply with clause 6.18a to the extent that the Customer has previously requested deletion of the Data.

- 6.19 Without limiting any other right or remedy available to SAM, SAM may restrict or suspend the Customer's access to and use of the Hosted Software or SaaS Services and/or delete, edit or remove the relevant Data stored using the Hosted Software or SaaS Services if SAM considers that the Customer or any of its personnel have:
- a undermined, or attempted to undermine, the security or integrity of the Hosted Software or SaaS Services or any Underlying Systems;
 - b used, or attempted to use, the Hosted Software or SaaS Services:
 - i for improper purposes; or

- ii in a manner, other than for normal operational purposes, that materially reduces the operational performance of the Service;
- c transmitted through, inputted into or stored using the Hosted Software or SaaS Services any Data that breaches or may breach the Agreement or any third party right (including Intellectual Property Rights and privacy rights), or that is or may be Objectionable, incorrect or misleading; or
- d otherwise materially breached the Agreement.

7 SUPPORT SERVICES

7.1 This clause 7 applies if the Order states that the Customer is:

- a is renting SAM Software or purchasing Hosting Services or SaaS Services; or
- b subscribing to Support Services.

7.2 For rental SAM Software and SaaS Services, the Support Services are included in the rental or SaaS Service Charges. For Hosting Services (other than for rental SAM Software), the Support Charges are additional to the Charges for the Hosting Services.

7.3 SAM will provide the Customer with support in accordance with the Service Level Agreement, provided the Customer has:

- a paid all Charges due;
- b in the case of Licensed SAM Software, maintained a proper operating environment for the use of the Software in accordance with any guidance from SAM, including in the Documentation; and
- c complied with the Agreement and the Documentation.

7.4 Unless otherwise specified in an order form or quote issued by SAM or agreed by SAM in writing:

- a the minimum term for Support Services is 6 months; and
- b after the completion of the minimum term, Support services can be cancelled by either party on not less than 30 days' written notice.

To avoid doubt, this clause 7.4 does not apply to Software rentals, Hosting Services or SaaS Services. The minimum term for Software rentals is as set out in clause 5.9 and the minimum terms for Hosting Services and SaaS Services are as set out in clause 6.17.

8 HARDWARE

8.1 This clause 8 applies if the Order states that the Customer is purchasing or renting Hardware.

- 8.2 SAM will use reasonable endeavours to deliver the Hardware on or before the delivery date requested in the Order, but will not be liable for any loss, liability or damage resulting from any delay, nor will the Customer be relieved of any obligation to accept or pay for the Hardware by reason of that delay.
- 8.3 Delivery and return of Hardware is at the Customer's cost and risk. If requested, SAM will ship Hardware at the Customer's expense.
- 8.4 Risk of loss in Hardware passes to the Customer when the Hardware is delivered or made available for collection by a common carrier or other person nominated by the Customer at SAM's premises (whichever is the earlier).
- 8.5 Where the Customer is purchasing Hardware, title in the Hardware passes to the Customer when full payment for the Hardware is received by SAM. Until payment in full of has been made:
- a the Customer must if requested by SAM store the Hardware supplied in such a way that it is clear that it is the property of SAM;
 - b if the Customer is in breach of the Agreement (including failing to pay any payment when due), SAM or its agent will be entitled to enter upon the Customer's premises at any reasonable time and repossess the Hardware;
 - c the Customer must not, and must not attempt to, sell, assign, pledge, mortgage, charge, encumber, hire, license, or part with possession or permit any lien to exist in respect of the Hardware or grant any security interest over the Hardware to any third party; and
 - d if the Customer sells the Hardware prior to payment in full in breach of clause 8.5c, then the proceeds of sale will be the property of SAM but for an amount no more than the Customer's indebtedness to SAM.
- 8.6 Where the Customer is renting Hardware:
- a unless otherwise specified in an order form or quote issued by SAM or agreed by SAM in writing:
 - i the term of the rental will begin on the 1st day of the month following receipt of the first rental payment;
 - ii the minimum term of the rental will be either 36 or 48 months (as specified in the Order); and
 - iii after the completion of the minimum term, the Hardware rental can be cancelled by either party on not less than 90 days' notice;
 - b legal and beneficial ownership of the Hardware remains with SAM at all times;
 - c the Customer must, until the Hardware is returned to SAM:

- i effect and maintain standard commercial insurance against standard risks, including fully insuring the Hardware for full replacement value, with SAM's interest in the Hardware noted on the applicable policy;
 - ii provide SAM with evidence of the Customer's compliance with clause 8.6ci on request by SAM; and
 - iii not allow anything to be done that might prejudice the insurance;
 - d the Customer must:
 - i take proper care of the Hardware;
 - ii not service or repair the Hardware;
 - iii allow SAM to access the Customer's premises at reasonable times to inspect, service and repair the Hardware;
 - iv not remove, deface or obscure, and not allow any other person to remove, deface or obscure, any marks of identification or ownership or registration on the Hardware;
 - v immediately notify SAM of any loss, theft or damage to the Hardware; and
 - vi is liable for any loss, theft or damage to the Hardware however caused. The amount to repair the damage or replace the Hardware, plus lost rental revenue (if applicable), is at SAM's sole discretion.
 - e if the Customer is in breach of the Agreement (including failing to pay any payment when due), or on termination of the rental or the Agreement for any reason, SAM or its agent will be entitled to enter upon the Customer's premises at any reasonable time and repossess the Hardware;
 - f if the rental or the Agreement is cancelled or terminated for whatever reason before the end of the minimum term, SAM reserves the right to charge the Customer the full monthly rental Charges for the outstanding contract period;
 - g SAM may assign its rights, title and interest in the Hardware in part or in whole at any time;
 - h the Customer:
 - i agrees that the supply of rental Hardware under the Agreement creates a security interest over the rental Hardware, and all of the Customer's present and future rights in relation to the rental Hardware and any proceeds, in favour of SAM that may be registered on the personal property securities register under the Personal Properties Securities Act 1999 (**PPSA**);

- ii must provide all information and do all things including the execution of documents as SAM may require for the purpose of ensuring that SAM has a perfected first ranking security interest in the Hardware and any proceeds under the PPSA;
- iii must not, and must not attempt to, sell, assign, pledge, mortgage, charge, encumber, hire, license, or part with possession or permit any lien to exist in respect of the Hardware or grant any security interest over the Hardware to any third party;
- iv agrees that sections 114(1)(a), 133 and 134 of the PPSA do not apply to the enforcement by SAM of any security interest created or provided for by the Agreement to which Part 9 of the PPSA applies, and waives any right it may have under sections 116, 120(2), 121, 125, 127, 129 and 131 of the PPSA on such enforcement; and
- v waives any right it may have to receive from SAM a copy of any financing statement, financing change statement or verification statement that is registered, issued or received at any time in relation to the Hardware.

9 CHARGES

9.1 The Customer must pay SAM the Charges.

9.2 The Charges:

- a set out in SAM's order form or quote are valid for up to 30 days from the date SAM issues the order form or quote; and
- b are subject to change without notice at any time prior to Order Acceptance. The Customer should confirm the Charges with SAM before placing an order.

9.3 Unless other set out in SAM's order form or quote, all freight, travel, accommodation, cabling and similar disbursements are additional to the Charges.

9.4 The Charges set out in SAM's order form or quote are quoted on the assumption that any existing PCs, printers and other peripheral equipment are suitable for the tasks required of them. Any additional costs arising from incompatible or inadequate hardware platforms, software or services provided by any third party suppliers are the responsibility of the Customer.

9.5 SAM will provide the Customer with valid GST tax invoices in accordance with the invoicing terms set out in SAM's order form or quote or, if none are stated:

- a for Software and Hardware purchases and installation and training services, prior to delivery where possible; and
- b for Software and Hardware rentals, Hosting Services, SaaS Services and the Software Support Plan, monthly in advance and prior to the due date for payment.

- 9.6 The Charges exclude GST, which the Customer must pay on taxable supplies, and all other taxes, duties and levies.
- 9.7 The Customer must pay the Charges and disbursements:
- a in accordance with the invoicing terms set out in SAM's order form or quote or, if none are stated:
 - i for Software and Hardware purchases and installation and training services, on delivery;
 - ii for monthly Charges for Software and Hardware rentals, Hosting Services, SaaS Services and the Software Support Plan, on or before the first day of the relevant month;
 - iii for all other amounts, within 7 days of the date of invoice; and
 - b electronically in cleared funds without any set off or deduction.
- 9.8 SAM may:
- a charge interest on overdue amounts. Interest will be calculated from the due date to the date of payment (both inclusive) at a rate of 1.5% per month; and
 - b recover all costs incurred in recovering overdue amounts and interest from the Customer, including the actual fees charged by its lawyers and any debt collection agency.
- 9.9 SAM may increase the Charges for Software and Hardware rentals, Hosting Services, SaaS Services and the Software Support Plan at any time following the expiry of the relevant minimum term by giving at least 30 days' notice. If the Customer does not wish to pay the increased Charges, the Customer may terminate the relevant rental or Services on no less than 10 days' notice, provided the notice is received by SAM before the effective date of the increase. If the Customer does not terminate the relevant rental or Services in accordance with this clause, the Customer is deemed to have accepted the increased Charges.

10 INTELLECTUAL PROPERTY

- 10.1 Subject to clause 6.9, title to, and all Intellectual Property Rights in, the SAM Software and all Underlying Systems is and remains SAM's property (and its licensors' property). The Customer must not contest or dispute that ownership, or the validity of those Intellectual Property Rights.
- 10.2 To the extent not owned by SAM, the Customer grants SAM a royalty-free, transferable, irrevocable and perpetual licence to use for its own business purposes any know-how, techniques, ideas, methodologies, and similar Intellectual Property used by SAM in the provision of the Services.

- 10.3 If the Customer provides SAM with ideas, comments or suggestions relating to the SAM Software, Services or Underlying Systems (together **feedback**):
- a all Intellectual Property Rights in that feedback, and anything created as a result of that feedback (including new material, enhancements, modifications or derivative works), are owned solely by SAM; and
 - b SAM may use or disclose the feedback for any purpose.
- 10.4 The Customer must:
- a not challenge SAM's (or the TSI Group's) ownership, or the validity, of the SAM Software or its Documentation or any other item or material created or developed by or on behalf of SAM under or in connection with the Agreement (including the Intellectual Property Rights in those items); and
 - b notify SAM in writing immediately after it becomes aware of any circumstance which may suggest that any person may have unauthorised knowledge, possession or use of the SAM Software or the Documentation.

11 CONFIDENTIALITY

- 11.1 Each party must, unless it has the prior written consent of the other party:
- a keep confidential at all times the Confidential Information of the other party;
 - b effect and maintain adequate security measures to safeguard the other party's Confidential Information from unauthorised access or use; and
 - c disclose the other party's Confidential Information to its personnel or professional advisors on a *need to know* basis only and, in that case, ensure that any personnel or professional advisor to whom it discloses the other party's Confidential Information is aware of, and complies with, clauses 11.1a and 11.1b.
- 11.2 The obligation of confidentiality in clause 11.1 does not apply to any disclosure or use of Confidential Information:
- a for the purpose of performing a party's obligations, or exercising a party's rights, under the Agreement;
 - b required by law (including under the rules of any stock exchange);
 - c which is publicly available through no fault of the recipient of the Confidential Information or its personnel;
 - d which was rightfully received by a party from a third party without restriction and without breach of any obligation of confidentiality; or

- e by SAM if required as part of a *bona fide* sale of its business (assets or shares, whether in whole or in part) to a third party, provided that SAM enters into a confidentiality agreement with the third party on terms no less restrictive than this clause 11.

12 WARRANTIES

12.1 Each party warrants that it has full power and authority to enter into, and perform its obligations under, the Agreement.

12.2 SAM does not give any warranty to the Customer relating to Third Party Software, which usually has separate warranties supplied by the relevant licensor.

12.3 SAM does not give any warranty to the Customer relating to Hardware purchased by the Customer. SAM will use commercially reasonable efforts to transfer to the Customer the benefit of any warranties provided by the relevant manufacturer.

12.4 For rental Hardware:

- a SAM warrants that the Hardware functions in accordance with the manufacturer's specifications;
- b SAM will, at its own expense, repair or replace Hardware that fails to function in accordance with the manufacturer's specifications as soon as reasonably practicable. Work carried out for causes other than Hardware failure will be charged to the Customer; and
- c the installation, transfer, removal and ongoing operation of software other than SAM Software is excluded from any warranty.

12.5 To the maximum extent permitted by law:

- a SAM's warranties are limited to those set out in the Agreement, and all other conditions, guarantees or warranties whether expressed or implied by statute or otherwise (including any warranty under Part 3 of the Contract and Commercial Law Act 2017) are expressly excluded; and
- b SAM makes no representation concerning the quality of the Software, Hardware or Services and does not promise that the Software, Hardware or Services will:
 - i meet the Customer's requirements or be suitable for a particular purpose; or
 - ii be secure, free of viruses or other harmful code, uninterrupted or error free.

12.6 The Customer agrees and represents that it is acquiring the Software, Hardware and Services, and accepting the Agreement, for the purpose of trade. The parties agree that:

- a to the maximum extent permissible by law, the Consumer Guarantees Act 1993 and any other applicable consumer protection legislation does not apply to the supply of the Service or the Agreement; and

- b it is fair and reasonable that the parties are bound by this clause 12.6.
- 12.7 Where legislation or rule of law implies into the Agreement a condition or warranty that cannot be excluded or modified by contract, the condition or warranty is deemed to be included in the Agreement. However, SAM's liability for any breach of that condition or warranty is limited, at its option, to:
- a supplying the Software, Hardware or Services again; and/or
 - b paying the costs of having the Software, Hardware or Services supplied again; and/or
 - c refunding the Charges paid for the Software, Hardware or Services.
- 12.8 The Customer acknowledges that Software may link to third party services, websites or feeds that are connected or relevant to the Software. Any link from the Software does not imply that SAM endorses, approves or recommends, or has responsibility for, those services, websites or feeds or their content or operators. To the maximum extent permitted by law, SAM excludes all responsibility or liability for those services, websites or feeds.

13 LIABILITY

- 13.1 SAM's maximum aggregate liability under or in connection with the Agreement or relating to the Software, Hardware or Services, whether in contract, tort (including negligence), breach of statutory duty or otherwise, must not exceed:
- a where the liability relates to Hosting Services, SaaS Services or Support Services, an amount equal to the Charges paid by the Customer for the relevant Hosting Services, SaaS Services or Support Services (as applicable) in the 1month period prior to the date of the first event giving rise to liability; and
 - b in all other cases, the Charges paid by the Customer for the Software, Hardware or Services to which the liability relates.
- 13.2 Neither party is liable to the other under or in connection with the Agreement or the Software, Hardware or Services for any:
- a loss of profit, revenue, savings, business, use, data (including Data), and/or goodwill; or
 - b consequential, indirect, incidental or special damage or loss of any kind.
- 13.3 Clauses 13.1 and 13.2 do not apply to limit SAM's liability under or in connection with the Agreement for:
- a personal injury or death;
 - b fraud or wilful misconduct; or
 - c a breach of clause 11.
- 13.4 Clause 13.2 does not apply to limit the Customer's liability:

- a to pay the Charges;
- b under the indemnity in clause 6.16; or
- c for those matters stated in clause 13.3a to 13.3c.

13.5 Neither party will be responsible, liable, or held to be in breach of the Agreement for any failure to perform its obligations under the Agreement or otherwise, to the extent that the failure is caused by the other party failing to comply with its obligations under the Agreement, or by the negligence or misconduct of the other party or its personnel.

13.6 Each party must take reasonable steps to mitigate any loss or damage, cost or expense it may suffer or incur arising out of anything done or not done by the other party under or in connection with the Agreement or the Software, Hardware or Services.

14 TERMINATION

14.1 Either party may, by notice to the other party, immediately terminate the Agreement if the other party:

- a breaches any material provision of the Agreement and the breach is not:
 - i remedied within 30 days of the receipt of a notice from the first party requiring it to remedy the breach; or
 - ii capable of being remedied; or
- b becomes insolvent, liquidated or bankrupt, has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, becomes subject to any form of insolvency action or external administration, or ceases to continue business for any reason.

14.2 The Customer may terminate the Agreement in accordance with clause 9.9.

14.3 Termination of the Agreement does not affect either party's rights and obligations that accrued before that termination.

14.4 On termination of the Agreement, the Customer must pay all Charges for Software, Hardware and Services provided prior to that termination.

14.5 No compensation is payable by SAM to the Customer as a result of termination of the Agreement for whatever reason, and the Customer will not be entitled to a refund of any Charges that it has already paid.

14.6 Except to the extent that a party has ongoing rights to use Confidential Information, at the other party's request following termination of the Agreement but subject to clause 6.17, a party must promptly return to the other party or destroy all Confidential Information of the other party that is in the first party's possession or control.

15 GENERAL

- 15.1 The Customer agrees that during the term of the Agreement and for 2 years after its expiry or termination (**Restraint Period**), the Customer and its related companies must not, without the prior written consent of SAM:
- a directly or indirectly solicit or offer employment or any contract for services to any of SAM's personnel;
 - b solicit or entice any member of the other party's personnel to terminate their position, employment or relationship with SAM; or
 - c assist or encourage any person to do any of the things described in clauses 15.1a and 15.1b.
- 15.2 Clause 15.1 will not apply to any SAM personnel who terminated their position, employment or relationship with SAM 2 years or more prior to the Customer offering employment or a contract for services.
- 15.3 Neither party is liable to the other for any failure to perform its obligations under the Agreement to the extent caused by Force Majeure.
- 15.4 No person other than the Customer and SAM has any right to a benefit under, or to enforce, the Agreement.
- 15.5 For SAM to waive a right under the Agreement, that waiver must be in writing and signed by SAM.
- 15.6 Subject to clause 6.13, SAM is an independent contractor, and no other relationship (e.g. joint venture, agency, trust or partnership) exists under the Agreement.
- 15.7 If SAM needs to contact the Customer, SAM may do so by email. The Customer agrees that this satisfies all legal requirements in relation to written communications. The Customer may give notice to SAM under or in connection with the Agreement by emailing admin@sam.co.nz.
- 15.8 The Agreement, and any dispute relating to the Agreement or the Software, Hardware or Services, is governed by and must be interpreted in accordance with the laws of New Zealand. Each party submits to the non-exclusive jurisdiction of the Courts of New Zealand in relation to any dispute connected with the Agreement or the Software, Hardware or Services.
- 15.9 Clauses which, by their nature, are intended to survive termination of the Agreement, including clauses 6.16, 6.17, 10, 11, 13, 14.3 to 14.6 and 15.8, continue in force.
- 15.10 If any part or provision of the Agreement is or becomes illegal, unenforceable, or invalid, that part or provision is deemed to be modified to the extent required to remedy the illegality, unenforceability or invalidity. If modification is not possible, the part or provision must be treated for all purposes as severed from the Agreement. The remainder of the Agreement will be binding on the Customer.

- 15.11 Subject to clauses 2.1 and 9.9, any variation to the Agreement must be in writing and signed by both parties.
- 15.12 The Agreement sets out everything agreed by the parties relating to the Software, Hardware and Services, and supersedes and cancels anything discussed, exchanged or agreed prior to the date of Order Acceptance. The parties have not relied on any representation, warranty or agreement relating to the Software, Hardware or Services that is not expressly set out in the Agreement, and no such representation, warranty or agreement has any effect from the date of Order Acceptance. Without limiting the previous sentence, the parties agree to contract out of sections 9, 12A and 13 of the Fair Trading Act 1986, and that it is fair and reasonable that the parties are bound by this clause 15.12.
- 15.13 The Customer may not assign, novate, subcontract or transfer any right or obligation under the Agreement without SAM's prior written consent, that consent not to be unreasonably withheld. In the case of a genuine sale of a going concern that uses SAM Software, SAM will typically allow the Agreement to be transferred provided the transferee accepts the Agreement and agrees to make all payments in accordance with the Agreement. The Customer remains liable for its obligations under the Agreement despite any approved assignment, subcontracting or transfer.