



Standard Purchase Agreement



EFTPOS New Zealand Limited is a Verifone company

EFTPOS New Zealand Ltd – Terms and Conditions of Sale

The EFTPOS New Zealand ("ENZ") party referenced in the order confirmation/Letter of Offer and Acceptance sent to you ("You" or "Your") agree that the standard terms and conditions contained herein shall govern all orders submitted by You for the ENZ products (the "Products") and accepted by ENZ and shall supersede any and all other terms and conditions (including those contained in Your order or order acknowledgment) unless mutually agreed upon in writing.

1. PAYMENT TERMS AND CONDITIONS

- 1.1 Prices.** The prices for the Products are those quoted by ENZ to You. Unless quoted, such prices do not include any excise, sales, use or other taxes, and therefore are subject to increase in the amount of any such taxes. Such prices also do not include any maintenance and support services which may be separately contracted for by the parties.
- 1.2** Payment ENZ shall be entitled to invoice You at the time of each shipment of Products to You. Except as may be specifically authorized in writing by ENZ. Payment terms for all invoiced amounts shall be the 20th of the month following the date of invoice. Any invoiced amount which is not paid when due shall bear a late fee at the rate of eighteen per cent (18%) per annum or the maximum rate permitted by applicable law, whichever is less. If You fail to pay any invoiced amount when due, then ENZ shall be entitled to withhold provision of any services until You re-establish Your credit to ENZ's satisfaction.
- 1.3 Title, Risk of Loss.** Title and risk of loss to the Products passes from ENZ to You upon the Products being made available to a common carrier or Your designee at ENZ's designated facility.
- 1.4 Ownership.** Until You have discharged all outstanding indebtedness to ENZ in respect of all Products, ENZ retains ownership in all Products delivered to You (or into custody on Your behalf) (Retained Products).

Until payment in full of such indebtedness for all Products has been made to ENZ, You acknowledge and agree that You: (i) hold the Retained Products as fiduciary and bailee agent for ENZ; (ii) will store, at all times, the Retained Products separately from Your or any 3rd party's goods so that they remain identifiable; (iii) will not encumber or allow any charge or security interest over the Retained Products; (iv) will insure the Retained Products; and (v) ENZ is permitted to enter into Your premises without prior notice to inspect and/or repossess the Retained Products, and to keep or resell any of the Retained Products repossessed.

If You manufacture, intermingle or deal with the Retained Products in such a manner that they become an integral part of any other object (Processed Goods) then the Customer holds these Processed Goods on trust for ENZ to the extent the Retained Products are incorporated or used to produce the Processed Goods, until payment in full of such indebtedness for all Products has been made to ENZ.

2. WARRANTY

- 2.1 Warranty Period.** The warranty period for each Product shall be twelve (12) months from the date such Product is shipped from ENZ's facility or the date title to such Product passes to You, whichever date is earlier (such period referred to herein as the "Warranty Period"). ENZ reserves the right to change a warranty period for a specific Product; provided that only orders placed after the effective date of such change shall be affected.
- 2.2 Warranty.** ENZ warrants that, for the Warranty Period: (1) all components of such Product, except software components, shall be free from faulty workmanship and defective materials; and (2) all software components of such Product shall substantially conform to the written documentation designated by ENZ for use with such software components. The warranties provided by ENZ in this Section 2.2 are the only warranties provided by ENZ with respect to the Products, and may be modified only by a written instrument signed by ENZ and accepted by You.
- 2.3 Warranty Claims.** If, during the applicable Warranty Period for a Product, it is determined that any component of such Product, except software components, is defective due to faulty workmanship or defective materials, or it is determined that any software component of such Product fails to substantially conform to the written documentation designated by ENZ for use with such software component, then such Product shall be returned to ENZ. Upon receipt of any such Product during the applicable Warranty Period, ENZ shall, at its expense, (1) in ENZ's sole discretion, repair or replace such Product, and (2) ship such Product to return it to its original location. ENZ's obligations hereunder shall arise only if ENZ's examination of the Product in question discloses to ENZ's satisfaction that the claimed defect or nonconformity actually exists and was not caused by any improper installation, testing or use, any misuse or neglect, any failure of electrical power, air conditioning or humidity control, or any act of God, accident, fire or other hazard. Repair or replacement of a Product (or any part thereof) does not extend the Warranty Period for such Product.
- 2.4 Limitations.** Such warranties do not apply to consumable items (e.g. paper), spare parts or services, and do not apply to Products, or components thereof, which have been altered, modified, repaired or serviced in any respect except by ENZ or its representatives. In addition, such warranties do not apply to any software component of a Product which is sold or licensed subject to a separate license agreement relating to such software component (including without limitation a "shrink wrap" license agreement); the warranties applicable to any such software component shall be solely as stated in such other license agreement. ENZ makes no warranties that the use of the software components of any Product will be uninterrupted or error-free or that such software will operate in conjunction with any other software or with any equipment other than the Products.
- 2.5 Disclaimer.** The express warranties of ENZ stated in section 2.2 above are in lieu of all other warranties, express, implied or statutory, including without limitation the implied warranties of merchantability, fitness for a particular purpose and non-infringement of third party rights. The express obligation of ENZ stated in section 2.3 above is in lieu of any other liability or obligation of ENZ arising out of or in connection with the delivery, use or performance of the Products. Repair or replacement (at ENZ's option) is your sole remedy for any such

damage, loss or injury. Any representation, warranty, condition or undertaking that would be implied in these terms and conditions of sale by legislation, common law, equity, trade, custom or usage is excluded to the maximum extent permitted by law. Nothing in these terms and conditions of sale excludes, restricts or modifies any condition, warranty, right or remedy that cannot be excluded, restricted or modified. You acknowledge that you are acquiring the Products for the purposes of a business and the consumer guarantees act 1993 does not apply.

3. SOFTWARE

- 3.1 Ownership.** Notwithstanding Section 1.5 above, You acknowledge that the Products contain proprietary electronics, software and technical information of ENZ or its licensor and that ownership of all patents, copyrights, mask work rights, trademarks, trade names and other intellectual property rights relating to or residing in the Products shall remain with ENZ or its licensor.
- 3.2 License for Software and Documentation.** Without limiting the generality of Section 3.1 above, with regard to any software provided by ENZ at any time (whether contained in a Product, provided on a diskette or other media, downloaded remotely or otherwise transferred) and in any documentation, the terms "sell" and "buy," and similar terms, as used in this Agreement shall mean the grant to You of a non-exclusive, non-transferable limited license (1) to use such software (in object code form only) and/or documentation together with Products provided by ENZ for the sole purpose of using such Products, subject to the provisions in any separate license agreement or other document (relating to such software and/or documentation) supplied by ENZ to You, and (2) in connection with any resale of Products provided by ENZ, to grant to the first purchaser thereof a sublicense to use such software (in object code form only) and/or documentation solely as provided in the foregoing clause "(1)" (subject to the restrictions imposed in Section 3.3 below).
- 3.3 Further Restrictions.** You may not reverse engineer, decompile, disassemble, translate, copy, modify, alter or otherwise change any Product, or part, or otherwise obtain the source code for any software provided by ENZ by any means, without the prior express written consent of ENZ.
- 3.4 Trademarks.** You may not remove from the Products (or their packaging or documentation), or alter, any of ENZ's trademarks, trade names, logos, patent or copyright notices, or other notices or markings, or add any other notices or markings to the Products (or their packaging or documentation), without ENZ's prior written consent.
- 3.5 Software Support.** ENZ will provide software support in respect to each terminal sold to You. The software support consists of compliance updates provided remotely or via on-site software installation provided at the sole discretion of ENZ (Software Support). If connectivity for remote updates is not available at the end users site then You will organise for the terminal to be relocated to Your site from time to time so that the updates can be completed.

ENZ charges a monthly software maintenance fee for every terminal sold for the Software Support as herein described (Monthly Software Maintenance Fee). The Monthly Software Maintenance Fee is detailed in the quote for the purchase of the terminal/s and may be changed from time to time at ENZ's discretion. The first charge for the Monthly Software Maintenance Fee will be debited on a monthly basis on the commencement date as per Your Letter of Offer.

The Monthly Software Maintenance Fee continues and remains payable until You have advised ENZ in writing that the terminal is no longer in use or until the date that ENZ has advised You that the Software Support will no longer be provided for those Products. The Support Fees will cease the following month. If a terminal is cancelled and subsequently found to be still be in service, You will be charged the Support Fees for the period the terminal was cancelled including the normal overdue payment interest charges. Your Support Fees obligations may be transferred to another user of the terminal only with written permission from ENZ.

4. LIMITATION OF LIABILITY

- 4.1 No Indirect damages.** ENZ shall not under any circumstances be liable to any person for any special, incidental, indirect or consequential damages, including, without limitation, damages resulting from use or malfunction of the products, loss of profits or revenues or costs of replacement goods, even if ENZ is informed in advance of the possibility of such damages.
- 4.2 Liability Cap.** Except as required by law, in no event will ENZ's liability in connection with the products or this Agreement exceed the amounts actually paid to ENZ for the products giving rise to such liability during the past twelve months. These limitations apply to all causes of action in the aggregate.
- 4.3 Limitation of Action.** No action may be brought or arbitration demanded at any time more than twelve months after the facts occurred giving rise to the cause of the action.

5. FOREIGN CORRUPT PRACTICES ACT.

- 5.1 Compliance with Laws.** You shall ensure that Your subsidiaries, owners, officers, directors, employees, partners, subcontractors, agents and representatives (collectively, Your Affiliates), fully comply with all applicable laws and regulations in connection with this Agreement, including all applicable anti-corruption and anti-bribery laws, including, but not limited to, the United States Foreign Corrupt Practices Act (the "FCPA") and the UK Bribery Act (the "Bribery Act") and US export control laws and regulations, as may be amended from time to time. Any breach of this clause shall be grounds for immediate termination of this Agreement by ENZ.
- 5.2 Representation and Warranty.** You represent and warrant that You have not committed and You have no information, reason to believe, or knowledge of any of Your Affiliates having committed or intending to commit, any violation of the FCPA or Bribery Act or any act or omission which could cause ENZ to be in violation of the FCPA or Bribery Act with respect to any activities related to this Agreement or the business of ENZ.

6. EXPORT CONTROL LAWS.

ENZ products, technology and/or software, including, without limitation, the Products are subject to U.S. export control laws and regulations, including embargoes and sanctions, as well as the laws and regulations of countries in which ENZ products, technology and/or software are sold.

- 6.1** You and Your agents, representatives, and employees, represent and warrant that You/they will not use, export or re-export, sell, re-sell, license, distribute, make available or transfer or cause or facilitate the transfer of any Products, including any component or part thereof, directly or indirectly outside of New Zealand.
- 6.2** You agree that if ENZ reasonably believes that You are in breach of any of the terms and conditions contained in this clause 6 that alone shall be sufficient grounds for further action by ENZ, including, without limitation, cancellation of any orders or denial of future business, without any liability or obligation to You. In addition, You hereby indemnify ENZ and its affiliates, directors, officers and employees for all costs, expenses, damages, claims, charges, penalties, fines and other losses that arise in connection with any breach by You or Your agents or employees of the terms and conditions contained in this clause 6.

7. GENERAL

- 7.1 Delays.** Neither party shall be liable for delays or failure to meet its obligations hereunder due to causes beyond the party's reasonable control, provided the nonperforming party promptly notifies the other party of the non-performance and takes all reasonable steps to recommence performance promptly.
- 7.2 Governing Law.** This Agreement shall for all purposes be governed by and interpreted in accordance with the laws in force in New Zealand and You further submit to the exclusive jurisdiction of the Courts operating in New Zealand.
- 7.3 No Assignment.** You may not assign, delete or otherwise transfer any right or obligation under this Agreement, whether by agreement, operation of law or otherwise, without ENZ's prior written consent. Any attempt to assign, delegate or otherwise transfer any of Your rights or obligations hereunder, without such consent, shall be void. Subject to the preceding sentence, this Agreement shall bind You and Your permitted successors and assigns.
- 7.4 Subcontractors.** Notwithstanding anything to the contrary herein, ENZ may engage subcontractors to perform any of its obligations under this Agreement.
- 7.5 Modifications.** Except as specifically contemplated herein, all modifications and waivers to this Agreement must be in writing and signed by both parties.
- 7.6 Severability.** If any term in these Terms and Conditions of Sale is considered illegal or unenforceable, it is to be severed. The rest of the terms will not be affected.
- 7.7 Termination.** ENZ may terminate this Agreement by providing you with 30 days prior notice in writing provided that the provisions of this Agreement which are intended or capable of having effect after the expiration or termination of this Agreement (including provisions relating to warranties, liability, ownership and licences) must remain in full force and effect following any termination of this Agreement.
- 7.8 Confidentiality.** From time to time we may be required to pass on to each other confidential information about our respective business. Any such information given by either party will be held by the other party in strict confidence and will not be passed on to any third party or used for any other purpose other than the direct related purpose to which the information was given. Confidential information excludes information which is: (i) lawfully in the public domain before its disclosure or enters the public domain afterwards otherwise than as a result of an unauthorised disclosure; (ii) becomes available to the receiving party from someone lawfully in possession of it who lawfully discloses it on a non-confidential basis; and (iii) is rightfully known by the receiving party before disclosure of it.

No public announcement or press release relating to ENZ or its products is allowed without ENZ's prior written consent, which will not be unreasonably withheld.