

# Terms of Trade

## 1. Definitions (Applicable over all Terms relating to iStore New Zealand Limited)

- 1.1 "iStore" means iStore New Zealand Limited or any agents, employees, franchises or subcontractors of iStore New Zealand Limited.
- 1.2 "Customer" means the party or parties receiving Goods and/or Services from iStore.
- 1.3 "Client" means the party or parties receiving Goods and/or Services from iStore.
- 1.4 "Due Date" means in respect to each invoice issued to the customer by iStore, the date that is seven days after the invoice date or some other date agreed in writing by the director of iStore New Zealand Limited.
- 1.5 "Event of Default" means an event specified in clause 6.1.
- 1.6 "Goods" means any items and/or materials provided to the Customer by iStore.
- 1.7 "Invoice" means a invoice or other such document issued by iStore to the Customer.
- 1.8 "Property" means the land owned by the Customer (either legally or beneficially) where iStore provides Goods and/or Services.
- 1.9 "Quote" means a quotation from iStore to the Customer for the supply of Goods and/or Services.
- 1.10 "Services" means services provided to the Customer by iStore.
- 1.11 "Terms and Conditions" means these terms of trade or other documentation iStore may have the customer accept when providing a quote, Service and/or providing goods.
- 1.12 "Loan Product" refers to any equipment and/or product that iStore is the sole owner of and has been loaned to the Customer for a temporary period.

## 2. Acceptance of Terms and Conditions

- 2.1 Any of the following done by or on behalf of the Customer shall constitute a binding contract and acceptance of these Terms and Conditions:
- (a) express or implied acceptance of any Quote;
  - (b) acceptance of any Goods or Services;
  - (c) the giving of any instructions to iStore that are acted upon; or
  - (d) any express or implied authority given iStore to provide Goods or Services to the Customer.

## 3. Customer Information

- 3.1 The Customer authorises iStore to collect such commercial, financial and personal information about the Customer as is necessary for assessing the credit worthiness of the Customer or enforcing iStore's right under these Terms and Conditions and further authorises iStore to disclose such information to other parties for those purposes.
- 3.2 Where the Customer is a natural person, the authority given pursuant to clause 3.1 shall constitute sufficient authority for the purposes of the Privacy Act 1993 and the Customer acknowledges that he or she has a right to access the information and request corrections to it.
- 3.3 Any personal information requested by iStore for the purposes of service work is necessary to proceed with the request for service. Client's email address shall be transferred to Apple for the purpose

of submitting a survey on the client's satisfaction of any service work undertaken by iStore. This will be treated by Apple in accordance with Apple's Privacy Policy (<https://www.apple.com/legal/privacy>) and will never be used for marketing purposes. By providing an email address to iStore the client consents to this transfer of personal information and its use by Apple for this purpose.

## 4. Reservation of Title and Liability for Payment

- 4.1 Payment of Goods and Services supplied by iStore is due on the Due Date unless otherwise approved in writing by a director of iStore New Zealand Ltd. iStore may in its sole discretion decide that no Goods or Services shall be supplied to the Customer until payment in received by iStore in advance of supply of the Goods of Services.
- 4.2 Property and ownership of any Goods and any services related to those Goods will not pass to the Customer until payment has been received in full for the total purchase price invoiced and all Goods shall be subject to a purchase security interest. iStore may require payment any owing amounts before releasing any Goods to the Customer.
- 4.3 Risk in the Goods shall pass at the time of delivery.
- 4.4 If payment for any Goods or Services is not made by the Customer to iStore in full by the Due Date, the following provisions shall apply:
  - (a) The Customer shall deliver the Goods to iStore on demand. In the event that the Customer does not comply with a demand immediately upon receipt or deemed receipt of the demand, iStore shall be entitled to enter upon the Customer's premises at any time and do all things necessary to take possession of the Goods. The Customer hereby grants permission and an irrevocable licence to iStore to enter upon the premises where the Goods shall be for the purpose of doing anything necessary to take possession of the Goods;
  - (b) The Customer will pay interest on all the amounts owing to iStore from the Due Date to the date or dates of payment at the rate of iStore's then current bank overdraft rate plus 5% or such lesser rate as iStore may accept in lieu thereof; and
- 4.5 The Customer will be responsible for all costs incurred by iStore in exercising its rights under these Terms and Conditions including, but not limited to, debt collection costs and legal fees properly incurred by iStore in seeking or obtaining recovery of amounts owing by the Customer to iStore.
- 4.6 Notwithstanding any request the Customer, any payment received by iStore may be appropriated by iStore to discharge such liability of the Customer to iStore as iStore sees fit.

## 5. Quotes

- 5.1 Quotes are valid for 14 days from the date of the Quote.
- 5.2 iStore reserves the right by notice to the Customer to alter or amend any Quote before receipt by iStore of acceptance of the Quote by the Customer.
- 5.3 iStore reserves the right, by notice to the Customer, to alter any Quote at any time prior to the supply of Goods and/or Services where the alteration is due to a increase in the cost to iStore of any Goods or Services that is beyond the control of iStore.

## 6. Defaults

- 6.1 The following events shall constitute an Event of Default:
  - (a) The failure to make payment by the Due Date;
  - (b) The Customer enters into an agreement for the sale or proposed sale of its business or assets;

(c) The Customer commits a breach of any of the Terms and Conditions and the Customer fails to remedy the breach within 7 days of receiving notice from iStore specifying the breach; and  
(d) The Customer is adjudicated bankrupt, or a receiver, liquidator or official assignee, administrator or statutory manager is appointed to the Customer or its business or assets, or any part of its assets, or the Customer is unable to pay its debts when due within the meaning of the Companies Act 1992, or iStore, acting reasonably, believes the Customer is likely to become unable to pay its debts when due, or execution of judgments for amounts over the sum of \$10,000 is levied against it and not discharged within thirty (30) days or within the terms of any arrangement made with the judgement creditor, whichever is the later.

6.2 Upon the occurrence of an Event of Default any amounts currently outstanding shall become immediately due and the Due Date for all amounts shall be deemed to the earlier of the actual Due Date or the date that the Event of Default occurs.

## 7. Cancellation and Withdrawal of Orders

7.1 The Customer may not defer or cancel an order once accepted by iStore or once a Quote has been accepted without iStore's consent in writing and with any request for an amendment, deferment or cancellation, the Customer must provide iStore with seven days notification in advance.

7.2 The Customer shall be responsible for and agrees to indemnify iStore for all costs incurred by iStore as a result of the Customer cancelling an order or the suspension of the provision of Goods or Services as a result of the occurrence of an Event of Default.

7.3 In the event that the provision of Goods and/or Services to the Customer is cancelled, suspended or terminated for any reason iStore shall have no responsibility whatsoever for any loss or damage of any kind which may result directly or indirectly from such cancellation or suspension or from any recovery of Goods pursuant to the provisions of these Terms and Conditions.

## 8. Limitations on Liability

Description:

8.1 Any description of the Goods and/or Services is given by way of identification and shall not constitute the contract a sale by description. The Customer shall take the Goods at the Customer's own risk as to their quality, conditions or suitability for any purpose.

Liability:

8.2 iStore's liability for damages arising out of or in connection with any contract for the sale of Goods or the supply of Services to the Customer will be limited to claims in relation to faulty Goods as set out in clause 8.4, and all conditions and warranties expressed or implied by statute the common law. Equity, trade custom or usage or otherwise are hereby expressly excluded to the maximum extent permitted by law.

Faulty Goods:

8.3 Any claims for the faulty Goods must be fully documented and referred to the iStore representative with whom the Customer has customary contact. Acceptance of any items will not constitute acceptance of claims. All items will be subject to inspection by iStore before credit will be considered.

8.4 To the extent permitted by law, iStore shall have the sole right to decide whether Goods are capable of repair and iStore's liability (if any) in respect of claims under any contract arising hereunder shall be limited as follows:

(a) Where the Goods are capable of repair, to the repair of the Goods or the payment of the cost of having the Goods repaired, or

(b) Where the Goods are incapable of repair to the replacement of the Goods or the supply of equivalent Goods or the payment of the cost of replacing the Goods or of acquiring equivalent Goods.

8.5 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Goods and/or Services from iStore for business purposes in terms of sections 2 and 43 of that act.

Indirect Loss:

8.6 So far as the law permits, iStore shall not be liable in any way whatsoever for any indirect or consequential loss or loss of profit arising from contract or otherwise including in particular, but not limited to, any loss by reason of delay, defective or faulty materials or workmanship, negligence or any act of matter or thing done, permitted or omitted by iStore and the Customer shall have no rights to off-set claims against the invoiced prices for Goods under any circumstances.

8.7 The Customer shall indemnify iStore against all claims and loss of any kind however caused or arising and without limiting the generality of the foregoing whether caused or arising as a result of the negligence of iStore or otherwise, brought by any person in connection with any matter of act, omission, or error by iStore in connection with the Goods and/or Services.

8.8 If, contrary to the disclaimer of liability contained in these Terms and Conditions iStore is forced or deemed to be liable, following or arising from the supply of Goods or Services to the Customer, then such liability is limited in aggregate to \$100.00 inc GST.

## 9. Information

9.1 The Customer acknowledges that they have received, read and understood a copy of these Terms and Conditions.

9.2 In the event that at any time due to any circumstance including, but limited to, pressures of trading, adverse marketing conditions, financial pressure from lenders, failure to pay rent, the failure to pay taxation, internal conflicts or any other cause, there is a reason for the Customer or any of its officers or others being signatories to this form, to suspect that the Customer may be or may become unable to pay its debts when due within the meaning of the Companies Act 1993, or may be adjudicated bankrupt or have a receiver, a liquidator or official assignee, administrator or statutory manager appointed to the Customer then the Customer will notify iStore immediately.

## 10. Exclusions and Variations

10.1 iStore shall have the right to vary or amend any of the provisions of these Terms and Conditions from time to time. The most current version of these Terms and Conditions shall be kept on iStore's website via <http://www.istorenz.com> and the Customer acknowledges that it shall be bound by the most current version of the Terms and Conditions.

## 11. Personal Property Securities Act 1999 ("PPSA")

11.1 The Customer grants a security interest under the Personal Property Securities Act 1999 ("PPSA") over any Goods supplied by iStore to the Customer. The Customer shall at iStore's request, promptly execute any document, contract, agreement, deed or other action as iStore may require to ensure that any security interest created constitutes a perfected security interest over the Goods.

11.2 The Customer waives any right to receive a verification statement in respect of any financing statement or financing change statement relating to the security interest under PPSA.

11.3 Nothing in sections 114(1)(a), 117(1), 133 and 134 of the PPSA shall apply to these Terms and Conditions. The Customer's rights as a debtor in sections 116, 119, 120(2), 121, 125-127, 129 and 132 of the PPSA shall not apply to these Terms and Conditions.

## 12. Miscellaneous

12.1 All notices authorised or required to be made under these Terms and Conditions shall be sent by email, delivered personally or sent by prepaid mail at such address as each party may from time to time notify the other parties. All notices shall be deemed to have been received the day they are sent except where sent by post. Posted notices shall be deemed to have been received two (2) days after the date of postage.

12.2 Save as specifically and expressly contemplated in these Terms and Conditions no provision hereof shall be changed, waived or modified without the express written agreement of iStore.

12.3 These Terms and Conditions embody the entire agreement of the Customer and iStore in respect of the ordering, supply, delivery of and payment for Goods or Services, and any order received by iStore from the Customer notwithstanding any purported change to the Terms and Conditions specified by the Customer.

12.4 Any waiver or failure to execute any rights by iStore shall not be deemed a waiver of any further or other right of iStore in respect to the Customer.

12.5 The Customer shall not be entitled to rely upon any statement of any kind made by a person including a representative or agent of iStore, which include a representation of any kind, which contradicts or is contrary to these Terms and Conditions.

12.6 iStore and the Customer agree that:

(a) All the provisions of these Terms and Conditions are reasonable in all the circumstances and each provision is and will be deemed to be severable and independent; and

(b) If any provision hereof is found by any Court of competent jurisdiction to be invalid, illegal or unenforceable in any respect the validity, legality and enforceability of the remaining provisions will not be affected and the invalid, illegal or unenforceable provision shall be severed from this document.

12.7 The Customer hereby irrevocably appoints each of the directors of iStore New Zealand Ltd at any time and from time to time jointly and severally as its attorney in the event of default by the Customer in the payment of any monies due and owing by the Customer to iStore and that default continuing for more than 14 days after due date for payment for the purpose of:

(a) Taking possession of the Goods of iStore held by the Customer or on the Property and disposing of such Goods owned by it;

(b) Enforcing its rights pursuant to clause 6.2, to the extent necessary to recover any monies owing to iStore by the Customer and any costs incurred by iStore in connection with such recovery.

## Return of Goods Policy

### 13. Change of Mind Returns

13.1 No change of mind returns for earphones, headphones, unsealed software, consumables, printers with opened ink cartridges, unsealed batteries and chargers, Customised to order (CTO) Apple Products, iTunes Cards and iStore Gift Cards.

13.2 Change of mind returns within seven (7) days or purchase only. Sealed and new condition only, proof of purchase must be shown. Unsealed, open or used products will incur a restocking fee ranging from ten percent (10%) to twenty-five percent (25%) depending of the type of product and/or condition of product and packaging at iStore's discretion.

### 13.3 Customised to Order (CTO) Apple Products

In the event of a CTO Order cancellation before the customer has taken possession of the product, iStore holds the right to retain the ten percent (10%) deposit taken at time of order. iStore is unable to return these products to its suppliers and it is the customer's responsibility to ensure iStore is ordering to the specifications the customer wants. Any specifications ordered are final and cannot be changed once the CTO order has been created with iStore's suppliers. Though the best care will be taken, it is the customer's responsibility to check to make sure iStore and its staff have recorded the correct product details before requesting any orders.

# Service Terms and Conditions

## 14. Service Request Terms

14.1 These terms and conditions apply to all service work (Including but not limited to In-Warranty, Out-of-Warranty and repairs covered under New Zealand Consumer Law) undertaken on behalf of the client by iStore New Zealand Limited or its employees, contractors or related companies.

14.2 A minimum "diagnostic fee" applies to all requests for diagnosis of a device's problems unless covered by Apple's manufacturing warranty, variable warranty or other kind of coverage (final coverage is to be determined by Apple). In the event that a diagnostic is performed by iStore but no repair takes place, the minimum diagnostic fee is still applicable.

14.3 iStore will provide an estimate of the work that is required to resolve the problem. However, in order to avoid ordering and charging the client for unnecessary replacement parts, if there is a problem that may have arisen from more than one part being faulty, iStore will first order the part most likely to be causing the problem (if applicable, as specified in Apple's Service Procedures) and will only include this part and the associated labour in our estimate.

14.4 If changing the first part does not resolve the problem, additional parts may need to be ordered. The client will be notified of this situation prior to any parts being ordered or any further work being done if ordering more parts may result in further charges to the client.

14.5 Service parts or products are new or equivalent to new in performance and reliability. All replacement products or part(s) fitted for all service jobs are warranted to be free from defects for ninety (90) days from the date of service or for the remaining period of your original product coverage, which ever is longer.

14.6 Software related issues are not covered under Apple Warranty and service charges will apply. iStore will contact the client in the event of a software issue being diagnosed with a quote for repair.

14.7 If during the course of repair an unrelated part fails due to normal wear and tear, any damage or any pre existing condition (such as a dry solder) iStore New Zealand Limited is not liable for such damage and/or failure(s). iStore will provide a further estimate of the cost to replace the additional parts, including the cost of labour to do so.

14.8 iStore holds the right to not proceed with any work until written confirmation has been obtained by the client. Whether this be in the form of a signed quote (signed in-store) or written acceptance via email.

14.9 iStore holds the right to refuse service for devices that show signs of the following:

- (a) Un-authorized modification, tampering or repair. All devices must contain OEM parts; or
- (b) Organic material or be in any other state that may pose a health and safety risk to iStore, it's employees and other customers.

14.10 If a device is found to have non-OEM parts, modifications or contain organic material as depicted in 14.9 the client accepts that iStore may charge a diagnostic fee to cover time spent inspecting device.

14.11 iStore and its agents will not be responsible for any damage to a product that occurs during the repair or diagnostic process that is a result of any unauthorised modifications or repairs or replacements not performed by Apple or an AASP. If damage results, iStore will seek your authorisation for any additional costs for completing service even if the product is covered by warranty or AppleCare. If you decline authorisation, iStore may return your product un-repaired in the damaged condition without any responsibility.

14.12 All service work is undertaken with the assumption that the appropriate backups have been made. If this is not the case, the client must let iStore know during the book-in process. iStore is not responsible for any data loss. If data recovery is requested by the client, service fees will apply regardless of warranty

status. In some cases data recovery will not be possible due to either a hardware failure or the repair strategy provided by Apple.

14.13 The client authorises iStore to run diagnostics on the client's device including Apple diagnostics and acknowledges that anonymous system information concerning the device will be sent to Apple. Any service work performed may also be subject to Apple's Terms and Conditions which can be found via <https://www.apple.com/nz/legal/>.

14.14 Before a device running iOS can be diagnosed the device must be updated and restored to the most recent release of iOS. Under no circumstances is iStore able to service an iOS device without updating it. iStore is unable to sign older releases of iOS. In order to correctly diagnose Mac hardware issues a software update may be required. The client authorises iStore to perform all software updates and/or restores once the device is booked in for service without prior notification.

14.15 iStore may hold a client's device until such a time as all service charges and other outstanding invoices have been paid in full.

14.16 If a client's device or devices have not been collected from iStore after communication and advice to do so for over three (3) months, iStore holds the right to dispose of client's device(s).

14.17 All turn around times quoted by any agents, employees, franchises or subcontractors of iStore New Zealand Limited are estimations and are subject to change at any time without notice.

14.18 All service work is also subject to iStore New Zealand Limited's terms of trade consisting of sections 1 through 13 of this document.

## 15. Out of Warranty Service Requests

15.1 Before commencing with a diagnostic for a device that is outside of it's Apple limited Warranty or AppleCare Protection Plan coverage, iStore will advise the client that faults could occur due to a number of issues. iStore will follow Apple's Service guidelines based on iStore's diagnosis of a particular fault.

15.2 Faults can not always be absolutely determined without attempting to replace parts that may or may not be faulty.

15.3 In respect to 15.1 and 15.2, the client acknowledges that:

- (a) There is no guarantee that the repair will result in the device being repaired;
- (b) The client has been advised that iStore will attempt to repair the machine by replacing the part most likely to have failed in accordance with the Apple Service guidelines and/or at the discretion of the iStore Service Team;
- (c) If the replacement part does not repair the device, the client will still be responsible for paying for the part and the associated labour to replace the part;
- (d) In the event that the replacement of a part does not repair the machine, iStore will seek the Client's permission before replacing any additional parts;
- (e) iStore shall not be held liable and the Client releases iStore from any liability in respect to the hardware or any parts thereof failing or being damaged as a result of performing the labour at the Client's request;
- (f) iStore provides no express or implied guarantee of Warranty in respect of the labour whatsoever;
- (g) The client shall have no right of redress against iStore as a result of the labour being performed; and
- (h) The client agrees to pay a stipulated Diagnostic Fee upon the service request. This is non-refundable but will be put towards the final cost of quoted repair if a quote for repair is accepted.

15.4 All Out-Of-Warranty service work is also subject to iStore New Zealand Limited's Terms of Trade and Service Terms consisting of sections 1 through 14 of this document.