

# CHILLISOFT

## Terms and Conditions of Trade

19 June 2025

### Definitions

**"Cloud Services"** means a Product that is provided primarily over the Internet.

**"Cloud Agreement"** means any agreement entered into between Chillisoft and you in relation to the provision of Cloud Services.

**"Chillisoft"** means Chillisoft Ltd in NZ and Chillisoft Pty Ltd in Australia

**"Customer"** means the customer of the Partner OR the organisation using the products

**"End User"** means the person or company using the Products, being either the Customer or the Partner as the case may be.

**"Order"** means an offer by a Partner to purchase Products from Chillisoft.

**"Products"** means any combination of Goods and Services which are supplied by Chillisoft to Buyer pursuant to a Contract.

**"Intellectual Property Rights"** means all rights in or to any patent, copyright, database rights, registered design or other design right, utility model, trade mark (whether registered or not and including any rights in get up or trade dress), brand name, service mark, trade names, eligible layout right, chip topography right and any other rights of a proprietary nature in or to the results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, whether registrable or not and wherever existing in the world including all renewals, extensions and revivals of, and all rights to apply for, any of the foregoing rights.

**"Partner"** or **"you"** means the person or company placing the Order whether on its own behalf or on behalf of Customers.

**"Subscription Product"** means any Product involving a recurring payment to Chillisoft.

**"Suppliers"** means the suppliers of products and software components to Chillisoft or directly to you on behalf of Chillisoft.

**"Third-Party Products"** means any products, software or services supplied by Suppliers to Chillisoft or directly to you.

### General

Chillisoft reserves the right to change these terms of trade from time to time by publishing an updated or new version of the terms of trade on our website [www.chillisoft.net](http://www.chillisoft.net). By continuing to order Products from us after updated or new terms of trade have been published you accept the updated or new terms of trade. If any term of these Terms and Conditions shall be invalid, void, illegal or unenforceable, the remaining provisions shall not be affected, prejudiced or impaired. Chillisoft may assign or licence or subcontract all or any parts of its rights and obligations hereunder without the agreement or consent of the Partner or any guarantor. Except as otherwise agreed in writing, these Terms and Conditions shall apply to all Orders made by the Partner to Chillisoft whether as part of the Account Application form or otherwise in future or in the course of business. These Terms and Conditions shall be given priority over any terms contained within each Order unless otherwise agreed in writing between Chillisoft and the Partner. If the Partner sells its business or any part thereof, the Partner shall be responsible to notify Chillisoft in writing of such sale to enable the Partner's account to be closed. To the extent that the Partner does not so notify, or cannot so prove notification, then the Partner and any guarantors shall be jointly and severally liable to Chillisoft for the payment of Products subsequently sold to a third party on the Partner's account as if the Partner had ordered the Products itself.

### Applicability to All Customers

These Terms and Conditions of trade apply to all customers purchasing products from Chillisoft, including but not limited to Partners and End Customers (collectively, 'Customers'). By placing an order or purchasing products, all Customers agree to be bound by these Terms, regardless of their business type or intended use of the products. Where specific provisions are intended solely for Partners, such provisions are clearly identifiable; all other provisions apply universally to all Customers.

### Orders

Chillisoft may accept any Order in whole or in part. Shipping by Chillisoft of Products for delivery following an Order (whether by single or multiple delivery) shall be taken as acceptance to the extent shipped. Accepted Orders (which includes forward orders and back orders) may not be varied or cancelled by the Customer without written approval from Chillisoft and, subject to the provisions set out in clause 9 (Claims, Returns and Repairs), there is no right of return.

## **Price**

1. The price of the Products shall be as agreed between the parties, as published, or otherwise such amount as indicated on quotes and invoices provided by Chillisoft regarding Products ordered. Prior to acceptance of an Order, Chillisoft may change its published prices at any time without notice. The price of Products on the Contract Date will be the price specified in the Quote, which will be valid for a limited amount of days specified on the Quote ("Quote Validity Period). If: (i) the Quote Validity Period expires prior to the Buyer submitting a Purchase Order to Chillisoft in respect of the relevant Quote; and (ii) there is a change to the price specified in the original Quote, Chillisoft will provide Partner or Customer with an updated Quote reflecting such price change.

Any Subscription Products supplied pursuant to these Terms and Conditions may be billed in various ways including subscription, consumption, and multi-year contract billings. These billing methods include, but are not limited to:

- (a) Subscription billing: where invoicing for products and services delivered over an agreed period (including multiple years), is spread across one or more periods within a delivery period.
- (b) Consumption billing: where invoicing for products and services delivered over an agreed period (including multiple years), is based on usage levels of products and services within an agreed billing frequency.

The above list is not exhaustive, and in no way limits the way in which Chillisoft can determine the price for any Product or Subscription Product. If an order involved hardware, Chillisoft may charge for freight and handling. The rates of charge are subject to change at any time without notice.

2. A service fee may be charged to you or the Customer where payment is made by way of a credit card. If the Customer makes direct payments to Chillisoft via credit card, it is your obligation to inform the Customer about these charges.

3. Chillisoft will recover from you any Goods and Services Tax (GST) payable in respect of supply of Products. Unless expressly included all amounts expressed or described in any agreement, price list or in invoices are GST exclusive.

## **Granting Credit**

Chillisoft may grant credit and we have sole discretion to determine the amount of credit we will extend to you at any time. Credit approval once granted may be withdrawn at any time. Where credit approval has not been granted or is withdrawn, payment for all Products supplied is required before delivery. Where credit has been approved, all invoices issued by Chillisoft are due and payable by the Due date.

## **Delivery**

Delivery of Products may not be refused after an Order has been accepted by Chillisoft. Where prices are stated as inclusive of delivery, delivery is to the delivery point accepted by Chillisoft. You shall make all arrangements necessary to accept delivery of the Products whenever they are tendered for delivery. If you are unable to accept delivery of the Products as arranged, then Chillisoft shall be entitled to charge a reasonable fee for redelivery. Delivery of the Products to a third party nominated by you is deemed to be delivered to you for the purposes of these Terms and Conditions. The failure of Chillisoft to deliver by a time specified by you shall not entitle you to treat that contract as breached or repudiated. Chillisoft shall not be liable for any loss or damage or expense arising from failure by Chillisoft to deliver the Products promptly. Where only partial delivery of an Order is made the Customer shall accept such delivery and be liable for payment thereof notwithstanding that other parts of the Order may be related, unless other agreements by Chillisoft have been made in writing. Chillisoft, relies on Suppliers in respect of some of the Products provided by Chillisoft. Accordingly, you will hold Chillisoft harmless for any delay in the delivery of the Products caused by the Suppliers. If any Third Party Products that are essential in order for Chillisoft to provide the Products to you or the Customer are no longer available to Chillisoft, Chillisoft reserves the right to cancel some or all of the Orders made by you in which event a full or partial refund (if applicable and as the case may be) will become payable to you or the Customer. For the avoidance of doubt, if the Products are supplied directly to the Customer you are required to make the Customer aware of these terms. If the Customer fails to comply with these terms, you will be liable under this clause as if the Products were delivered to you.

## **Late Payment fees**

If payment is not made in full by the due date, Chillisoft is entitled to charge you interest on the unpaid overdue balance at the rate of 2% per month or part thereof, compounding monthly on the unpaid balance owing on the first day of each month until payment in full is received by us, and we may charge you costs (including collection costs and legal costs on a solicitor-client basis) and decline to accept orders from you or suspend delivery of further Products or performance of further services until the account is paid in full.

## **Property**

1. With the exception of Software which is subject to licence (where it is not intended that title should ever pass to you, but shall remain in Chillisoft for Chillisoft proprietary products, or with the licensor for third party products, as

specified in the relevant licence agreement), property and ownership in Products, whether in their original form or incorporated in or attached to another product will not pass to you but will remain with Chillisoft until we receive payment in full of the purchase price of the Products and all other amounts that you owe to us for any reason. For Products other than Software, until property passes to you:

- (a) you shall hold the Products in trust as fiduciary bailee for Chillisoft, and store them in a manner to enable them to be identified and cross referenced to particular invoices; and
- (b) Chillisoft holds a security interest in those Products and may register its security interest on the Personal Property Securities Register.

2. Where you purchase any Products for your own use, you must tell us immediately in writing and you must not resell or part with possession of those Products, before you have paid for them in full, unless we have given you written consent. Chillisoft may terminate your appointment as a Chillisoft partner in the event of any misuse of a Not for Resale (NFR) Product licence.

### **Claims, Returns and Repairs**

For hardware products you shall inspect the Products on delivery and shall notify Chillisoft in writing of any apparent defect, shortage in quantity, damage or failure to comply with the Order or quote. No claims for defective Products, shortage in quantity, damage or failure to comply with the Order or the quote will be accepted unless Chillisoft is notified in writing within five (5) business days of delivery. You agree that you will not return any of the Products without first informing Chillisoft and obtaining a Returns Authority (RA) number issued by Chillisoft. The issue of a RA is not of itself any kind of admission or acceptance of a return. No credit or replacement shall be given, or repair undertaken unless and until Products so returned have been verified as being defective or otherwise valid for repair or return by Chillisoft. You shall be liable for a Restocking Fee on all goods other than those being defective, damaged or for failing to comply with the Order or quote. The current Restocking Fee is 15% of the price of the Products returned. All freight, handling and other charges in relation to returning goods (other than goods defective, damaged or not ordered) are your responsibility. If the Products are supplied directly to the Customer, you are required to make the Customer aware of these terms. If the Customer fails to comply with these terms, you will be liable under this clause as if the Products were delivered to you. You shall not be entitled to set off against or deduct from the price of Products sold any sums owed or claimed to be owed to you by Chillisoft.

### **Disputed Charges**

If you object to any invoiced item, you may withhold payment of the disputed amount but only if, on or before payment or the Due date for payment (whichever first occurs), notice in writing of the dispute is given to Chillisoft, setting out the details of the amount disputed, the reasons for the dispute, and the basis for calculating the disputed amount. Chillisoft will investigate all disputes. If the amount is found to be payable (in whole or in part) then you must pay the due amount within 7 days of receiving notice and the basis of the decision. Invoiced amounts that are not objected to in writing within 30 days of the invoice date are deemed to be correctly charged. Chillisoft will not accept any disputes directly from End Users unless you are the End User.

### **Credit Policy and Default**

1. If you or the Customer defaults in payment of any invoice when due and payable, you shall indemnify Chillisoft from and against all expenses, costs, and disbursements incurred by Chillisoft in pursuing the debt including all legitimate legal costs and the fees or commission charged to Chillisoft by any mercantile agency. If you or the Customer fail to pay for the Products in accordance with invoices due by you or the Customer, Chillisoft may at its sole discretion do any one or more of the following:

- (a) cancel any provision of credit to you;
- (b) require cash pre-payment for any further Products ordered;
- (c) reverse any discounts allowed;
- (d) commence legal proceedings against you (and any guarantors) for all outstanding amounts, interest and costs;
- (e) provide to a credit reporting agency details of the payment default;
- (f) decline to supply Products to you or the Customer (even if the Order has been accepted and the goods are in transit);
- (g) terminate any other agreement with you; and
- (h) exercise any other rights

2. By entering into these Terms and Conditions you assume full liability for monies owed by the Customer to you, Chillisoft or the Supplier. In the event a Customer does not pay Chillisoft or the Supplier for any Products or Third Party Products (as the case may be), you acknowledge that Chillisoft or the Supplier may recover any outstanding monies from you

### **Limitation of Liability**

Chillisoft acts as a distributor in providing Third Party Products. Accordingly, Chillisoft cannot provide any guarantees with respect to the quality or availability of Third Party Products it provides via the engagement of Suppliers. In the event that Third Party Products are no longer available to Chillisoft or there is a reduction in quality of the Third Party Products and therefore Chillisoft can no longer provide all or part of the Third Party Products to you or the Customer, Chillisoft will not assume any liability to you or the Customer for any losses incurred as a result of the unavailability or reduced quality of the Third Party Products.

### **Intellectual Property Rights**

1. Nothing in these Terms and Conditions gives you or the Customer any interest or right in the Intellectual Property Rights of Chillisoft or any Supplier.
2. You and the Customer may only use the Products in way that will not infringe the Intellectual Property Rights of Chillisoft or the Suppliers.
3. The Customer is hereby granted a non-exclusive license to use the Products but subject to any end user agreements imposed by the Suppliers in respect of the Third Party Products which you must cause the End Users to enter into.

### **Third Party Providers & End Users**

1. You hereby acknowledge that Chillisoft engages Suppliers for the supply of Third-Party Products to enable Chillisoft to provide the Products to you and the Customer. Accordingly, you acknowledge and agree that:

- (a) The Third-Party Products are subject to certain rights of the Supplier, including but not limited to Intellectual Property Rights.
- (b) The Supplier will, at all times, retain ownership of any intellectual property licensed to the Customer or you.
- (c) You will not infringe the Intellectual Property Rights or copyright of any Supplier and if required by a Supplier, you agree to and, where applicable, enforce the Customer to enter into a licence agreement, end user agreement or similar document from the Supplier in any form prescribed by such Supplier.
- (d) You must adhere to any terms provided by Chillisoft or a Supplier as specified in any program documentation provided to you.
- (e) You must not modify any program or hardware provided by Chillisoft through a Supplier without the written consent of Chillisoft or such Supplier.
- (f) If you believe that a Supplier's or Chillisoft's Intellectual Property Rights or copyright have been infringed, you must notify Chillisoft and the affected Supplier in writing within 14 days of becoming aware of this infringement.
- (g) You must accept any replacement hardware or software if so required by Chillisoft or a Supplier as a result of a copyright or Intellectual Property Infringement.

2. You acknowledge and agree that if a Supplier:

- (a) amends or terminates a Supplier Agreement; or exercises its rights under a Supplier Agreement in such a way that prevents the Supplier from meeting its obligations under these Terms and Conditions; then Chillisoft may amend or terminate these Terms and Conditions to ensure that it can comply with its obligations under the Supplier Agreement and these Terms and Conditions.

3. You agree that you will ensure your customers enter into a legally binding Agreement and the customer agrees to use the software products only in accordance with the end user software licence supplied with the software product and agrees that the vendors will have the right to enforce the terms of such end user software licence.

### **Subscription Products / Cloud Services**

1. If Chillisoft accepts an Order for any Subscription Product, the following terms will apply in addition to those set out in these Terms and Conditions:

- (a) The Partner must comply with their obligations relating to Third-Party Products and Services.
- (b) The Partner must not misrepresent in any way, usage levels relating to the Subscription Product.
- (c) In the event that you breach these Terms and Conditions, and without limiting any other rights Chillisoft may have with respect to your default, you agree that:
  - (i) Chillisoft may cease supplying any Subscription Product to you, by either suspending your account or terminating these Terms and Conditions.
  - (ii) If Chillisoft ceases supplying any Subscription Product to you, Chillisoft may serve you with a notice requiring that you assign all your rights and obligations under any or all End User Agreements that you have entered into. You must comply with any such notice as soon as you are reasonably able to do so.
  - (iii) You Indemnify Chillisoft for any loss, expenses, costs, or harm suffered in relation to a breach of these Terms and Conditions by you.

### **Warranty**

1. Product are covered by manufacturers' warranty. To the extent permitted by law, Chillisoft's entire responsibility with respect to warranties for the Products is to pass on to you the benefit of any such warranties. Subject to clause 3 below, software Products are not warranted by Chillisoft under these Terms. Such software Products are warranted in accordance with the relevant licence agreements governing their use.

2. To the extent permitted by law, the manufacturers' warranties referred to in clause 1 above are in substitution for all other terms, conditions and warranties, whether implied by statute or otherwise (including implied warranties with respect to merchantability and fitness for purpose) and all such terms, conditions and warranties are expressly excluded.

3. Certain legislation may imply warranties or conditions or impose obligations upon Chillisoft which cannot be excluded, restricted or modified except to a limited extent. These Terms must be read subject to those statutory provisions. If those statutory provisions apply, to the extent to which Chillisoft is able to do so, its liability will be limited, at its option, to:

(a) in the case of Products: the replacement of the Products or resupply of equivalent products; repair of the Products; payment of the cost of replacing the Products or acquiring equivalent products; or the payment of the cost of having the Products repaired; and

(b) in the case of services: the supply of the services again; or the payment of the reasonable cost of having the services supplied again.

4. Chillisoft does not warrant that repair facilities or parts will be available in respect of any of the Products.

### **Marketing**

The Partner agrees that Chillisoft may collect, store and use Partner data, including personal information, for the purpose of facilitating its marketing and sale of the Products, and the Partner hereby consents to such collection, storage and use of data by Chillisoft for these purposes. Notwithstanding the foregoing, Chillisoft agrees not to share personal information with third parties without the Partner's prior consent. The Partner further consents to the use of such data for communicating product and promotional information to the Partner via email or other electronic means unless the Partner notifies Chillisoft in writing that it does not wish to receive such promotional information.

### **Assignment**

You may not assign the rights or obligations under these Terms and Conditions nor subcontract any contract for the purchase of Products. However, if you sell your business or for any reason cease to carry on business, you agree to assign your Customers that are currently End Users of Chillisoft Products to Chillisoft so that Chillisoft may enter into supply agreements directly with such Customers.

### **Force Majeure**

Chillisoft will have no liability to you or the Customer in relation to any loss, damage or expense caused by Chillisoft's failure to complete an Order or delivery or contract as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lock-out, war or the inability of Chillisoft's suppliers to supply necessary materials or any other matter beyond Chillisoft's control.

### **Privacy Information**

Chillisoft may give information about you or the Customer, its guarantors, directors or proprietors to a credit reporting agency for the following purposes:

(a) to obtain a consumer credit report about you or the Customer, their guarantors, directors or proprietors.

(b) allow the credit reporting agency to create or maintain a credit information file containing information about you or the Customer, their guarantors, directors or proprietors; and

(c) to obtain commercial credit information about you or the Customer, their guarantors, directors or proprietors from a credit reporting agency. It is your responsibility to make the Customers aware of this clause in written form prior to supplying Products to them. In doing so, you must advise Customers that Chillisoft may use and disclose their personal information to enable Chillisoft provide the Products.

### **Proper Law**

For business conducted in Australia by Australian Partners:

The agreement is governed by and will be construed in accordance with the laws of the State of New South Wales and the parties agree to submit to the exclusive authority of the courts of the State of New South Wales. Notwithstanding the foregoing, you must:

(a) Comply with the laws of Australia and any international laws that may be applicable to the Products, including but not limited to laws relating to the Intellectual Property of the Suppliers

For business conducted in New Zealand by New Zealand and Pacific Island Partners:

The agreement is governed by and will be construed in accordance with the laws of New Zealand and the parties agree to submit to the exclusive authority of the courts of New Zealand. Notwithstanding the foregoing, you must:

(a) Comply with the laws of New Zealand and any international laws that may be applicable to the Products, including but not limited to laws relating to the Intellectual Property of the Suppliers

**Your obligations in respect of Suppliers**

1. Any indemnities provided under these Terms and Conditions by the Partners in favour of Chillisoft shall extend to the benefit of the Suppliers.
2. You must use all reasonable commercial efforts to ensure that End Users comply with any end user agreements issued by the Suppliers.
3. Where required by a Supplier, you must incorporate any relevant policies into any agreements to be entered into with End Users.
4. You must provide Chillisoft with copies of all of the Supplier end user agreements signed by Customers (where such agreements are in executable form) for provision by Chillisoft to the relevant Suppliers.
5. You must comply with any trademark usage guidelines provided by us to you on behalf of any Suppliers.
6. You must advise Customers of any applicable warranty guidelines and technical support guidelines issued by the Suppliers to you or provided to you by us.
7. You must enter into and comply with any software licensing agreements issued by Suppliers to you or provided to you by us where required by the Suppliers.

**Products generally**

1. You must not make any representations or warranty claims to third parties or employees with respect to the Products or Third-Party Products.
2. You must not and, must ensure that the Customer does not, reverse engineer, decompile or disassemble any object code within the Products or the Third Party Products.
3. You must not and, must ensure that the Customer does not, sublicense or distribute the Products or Third-Party Products.