## Live Longer Limited T/A HiHo – Terms and Conditions

- 1.2
- stomerDefinitions
  'Contract' means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
  'HiHo' means Live Longer Limited T/A HiHo, its successors and assigns or any person acting on behalf of and with the authority of Live Longer Limited T/A HiHo.
  'Customer' means the persons, entities or any person acting on behalf of and with the authority of the Customer requesting HiHo to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:

  (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and 1.3

  - if the Customer is a partnership, it shall bind each partner jointly and severally; and if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and includes the Customer's executors, administrators, successors and permitted
- (o) includes the Customer's executions, administrations, successors and perimited assigns. 
  "Services" means all Products (which includes any content, files, information, printed or wirtual material, data, hardware, software or applications (whether supplied from a third party software development company or where custom developed or programmed for the Customer), brands, designs, images, graphics, pictures, trademarks, manuals, and other associated documentation and/or goods, accessories or parts) or Services (which includes any advice or recommendations, consultancy, hosting (which includes virtual server hosting, website hosting, e-mail hosting, e.c.), monitoring, data back-up or storage, design and/or website maintenance, brands, designs, project management work, brand integration, strategising and analytical services, technical service, support and training, repairs, or installation of Products, etc.) supplied by HiHo to the Customer, at the Customer's request, from time to time (where the context so permits the terms "Products' or Services' shall be interchangeable for the other).

  "Web Site" means a location which is accessible on the Internet through the World Wide Web and which provides multimed content via a graphical User Interface.
- 1.5
- 16
- Or services shall be interchargeacier or the cinter).

  Web Site' means a location which is accessible on the Internet through the World Wide Web and which provides multimedia content via a graphical User Interface.

  Prohibited Content" means any content on any advertising media that:

  (a) is, or could reasonably be considered to be, in breach of the Broadcasting Act 1989; the Fair Trading Act 1986; or any other applicable law or applicable industry code; or (b) contains, or could reasonably be considered to be, misleading or deceptive, likely to mislead or deceive or otherwise unlawful; or (c) is, or could reasonably be considered to be, misleading or deceptive, likely to mislead or deceive or otherwise unlawful; or (c) is, or could reasonably be considered to be, in breach of any person's Intellectual Property Rights (including, but not limited to, the distribution of music files or any other material in which the Customer does not own the copyright).

  "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information, know-how, trade secrets, financial and commercial affairs, contracts, client information, occupation, direv's license details, electronic contact (entail, Facebook or Twiter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit of kin and other contact information (where applicable), previous credit applications, credit
- history) and pricing details.
  "Cookies" means small files which are stored on a user's computer. They are designed "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web serve or the client's computer. If the Customer does not wish to allow Cookies to operate in the background when ordering from the website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Products or Services via the website.

  "Charges" means the Charges payable (plus any Goods and Services Tax ("GST") where applicable) for the Services as agreed between HiHo and the Customer in accordance with clause 5 below and shall be in New Zealand dollars (\$NZ), unless otherwise specified.

- The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for, or accepts Services provided by HiHo.
- The event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail. 2.2
- Any amendment to the terms and conditions contained in this Contract may only be 2.3
- Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties. The Customer acknowledges that the supply of Products on credit shall not take effect until the Customer has completed a credit application with Hilho and it has been approved with a credit limit established for the account. In the event that the supply of Products request exceeds the Customers credit limit and/or the account exceeds the payment terms, Hilho reserves the right to refuse delivery. These terms and conditions are meant to be read in conjunction with the Terms and Conditions posted on HilhOs website. If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail.
- 2.5
- 2.6
- bocarriest after in territies and contained in the None of HHfo's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of HiHo in writing nor is HiHo bound by any such unauthorised statements. Once accepted by the Customer, HiHo's quotation shall be deemed to interpret correctly 2.7
- Once accepted by the Customer, HiHo's quotation shall be deemed to interpret correctly the Customer's instructions, whether written or verbal. Where verbal instructions only are received from the Customer, HiHo shall not be responsible for errors or omissions due to oversight or misinterpretation of hose instructions.

  Any advice, recommendations, information, assistance or service provided by HiHo in relation to Services provided is given in good faith, is based on information provided to HiHo, and HiHo's own knowledge, and experience. Whilst it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Services, human error is possible under these circumstances, and HiHo shall make all effort to offer the best solution to the
- under these circumstances, and HiHo shall make all effort to offer the best solution to the Customer. The Customer accepts and acknowledges that copyright is retained by HiHo on all design work and other Services provided by HiHo including text, images, ideas, visuals and illustrations unless specifically released in writing and after all costs have been settled. This Contract constitutes the entire Contract between HiHo and the Customer, and the Customer hereby acknowledges that no reliance is placed on any representation made by HiHo, but not embodied in this Contract. Electronic signatures shall be deemed to be accepted by either party providing that the parties have compiled with Section 228 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act. 2.11

Change in Control

The Customer shall give HiHo not less than fourteen (14) days prior written notice of any
proposed change of ownership of the Customer andlor any other change in the
Customer's details (including but not limited to, changes in the Customer's name, address
and contact phone or fax numberis', change of trustees or business' practice). The
Customer's hall be liable for any lots incurred by HiHo as a result of the Customer's failure to comply with this dause

### Charges and Payment

- Charges and Payment
  At Hirlo's sole discretion the Charges shall be either:
  (a) as indicated on any invoice provided by Hirlo to the Customer; or
  (b) Hirlo's quoted price subject to clause 4.3, which will be valid for the period stated in
  the quotation or otherwise for a period of thirty (30) days;
  (c) as per Hirlo's set non-refundable monthly Charges for the Services (\*Plan\*), which
  will be as slipulated (including when due and payable) by Hirlo in the Plan.
  A copy of the written estimate or quotation is to be signed and dated by the Customer to
  indicate acceptance and should be returned to Hirlo. As an atternative, the Customer may
  send an official order for the Services via email in reply to the estimate or quotation which
  will imply the Customer's acceptance of Hirlo's terms and conditions. The Customer
  accepts that no work will be commenced until acceptance has been supplied to Hirlo as
  per this clause. er this clause
- trins calcuse.

  Hithoral and/or Varied Services:

  Hith agrees that there will be no charge in the preparation of the initial quotation, which may include Customer discussions, project scoping, research, testing and business analysis, etc. However, in some instances the aforementioned services may be charged to the Customer additionally (at Hitho's sole discretion). In the event may be charged to the Customer additionally (at HiHo's sole discretion). In the event the Customer requires proofs, mock-ups, layouts, samples or dummies or printed, typewritten or other good copy and/or edits, this shall be invoiced at HiHo's hourly rate unless specified ortherwise in the initial quotation, therefore, this variation shall be detailed on the invoice as per sub-clause (g). All work carried out whether experimentally or otherwise at the Customer's request will be charged to the Customer. Any tabulated work and/or foreign language included in the job but not contained in the manuscript originally submitted for the purpose of estimating may be charged to the Customer shown as extras on the invoice; Unless otherwise agreed, the Customer shall be the Customer shall control to the job; Where the performance of any Contract with the Customer requires HiHo to obtain products and/or services from a third party, the Contract between HiHo and the customer shall incorporate, and shall be subject to, the conditions of supply of such products and/or services to HiHo, and the Customer shall be liable for the cost in full including HiHo's margin of such products and/or services.

  - (d)
  - including HiHo's margin of such products and/or services

- Whilst every effort will be taken by HiHo to match virtual colours with physical colours, HiHo will take no responsibility for any variation between virtual sale samples and either the virtual sale sample displayed on the Customer's computer and/or the final product. Should a physical sample be required this will be provided on request by the Customer and will be charged for as an extra and charged contra against final invoice;
  HiHo reserves the right to amend the Charges where there is any variation to the accepted plan of scheduled Services, or instructions/specifications, which will be charged for on the basis of HiHo's standard hourly rates (and double such rate for any Services provided outside HiHo's normal business hours) and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of comcletion:
- of completion
- As a result of increases beyond HiHo's reasonable control in the cost of materials or (h) As a result of increases beyond HiHo's reasonable control in the cost of materials or labour (e.g., briting-party heroix of operator or HiHo's costs (e.g., google) or fluctuations in currency exchange rates, etc.). Where the Customer is on a Plan, HiHo will provide one (1) month's written notice to the Customer of any variation to the Charges thereot;
  (i) The Customer acknowledges that all Services and support for email are chargeable in addition to the Charges;
  (ii) HiHo shall not be held responsible for any amendments made by any third party before or after a design in published.
  At HiHo's sole discretion a deposit may be required.
  Time for payment for the Services being of the essence, the Charges will be payable by the Customer on the date's determined by HiHo, which may be:
  (a) on completion of the Services;
  (b) by way of installments/progress payments in accordance with HiHo's payment

- - (b) by way of instalments/progress payments in accordance with HiHo's payment schedule;
- (a) way of installments/progress payments in accordance with rilino's payment schedule;
  (c) for certain approved Customer's, due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
  (d) the date specified on any invoice or other form as being the date for payment; or (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by HiHo.
  The Customer shall not be entitled to set off against, or deduct from the Charges, any sums owed or claimed to be owed to the Customer by HiHo nor to withhold payment of any invoice because part of that invoice is in dispute.
  Unless otherwise stated the Charges does not include GST. In addition to the Charges, the Customer must pay to HiHo an amount equal to any GST HiHo must pay for any supply by HiHo under this or any other agreement for the sale of the Products. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Charges. In addition, the Customer must pay any other taxes and dufies that may be applicable in addition to the Charges except where they are expressly included in the Charges.

- Provision of the Services
  Any time specified by Hillo for provision of the Services is an estimate only and Hillo will not be liable for any loss or damage incurred by the Customer as a result of provision being late. However both parties agree that they shall make every endeavour to enable the Services to be provided at the time and place as was arranged between both parties. In the event that Hillo is unable to provide the Services as agreed solely due to any action or inaction of the Customer, then Hillo shall be entitled to:

  (a) charge the Customer additionally for re-providing the Services at a later time and date; or

  - (b) subject to clause 21.3, terminate the Contract.

- Product Specifications
  The Customer acknowledges that all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in HiHo's or manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Customer shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by HiHo.
  The Customer shall be expensible for eneurion that the Products ordered are suitable for
- The Customer shall be responsible for ensuring that the Products ordered are suitable for their intended use. 6.2

- Design Concepts and Projects
  Hillho shall provide an initial design concept for branding a business for the Customer's
  consideration. Additional designs can be offered by Hillo which would be at an extra cost
  to the Customer.
  Any indication provided by Hillo as to the duration of the project shall be considered as an
  estimate and shall commence from the date that cleared deposit funds are received by

- HiHo. HiHo shall not be responsible for any project over-runs regardless of the cause. HiHo considers that the design project is accepted upon receipt of the Customer's signed estimate or quadation form. Any associated services such as sprinting, display panel production, film work, Web Site design and development, publishing, etc. to be provided by HiHo or contracted on the Customer's behalf shall constitute a separate project and can be treated as a separate charge.

# Web Site Development

- lo's Responsibilities: Upon acceptance of HiHo's quotation, and in accordance with this Contract, HiHo
- will:

  (i) use its best endeavours to develop the Web Site in accordance with the Customer's instructions and specifications; and
  (ii) to the extent specified in the Customer's instructions and specifications, negotiate and procure any third-party agreements on behalf of the Customer.

  (b) The Customer acknowledges that the development of the Web Site by Hillo is based upon current technology platforms (e.g. intemet browsers, mobile, android, etc.), and therefore Hillo cannot guarantee that Web Site features and for content will display complete, and that the overall sized processors will be the came for use he update.
- 8.2
- therefore HiHo cannof guarantee that Web Site features and for content will display correctly, and that the overall visual experience will be the same, for use by either superseded or presently undeveloped technology.

  Customer's Responsibilities:
  (a) The Customer will, in addition to any other obligations expressed in this Contract, have the following responsibilities:
  (i) provision of all content (including data, logos, designs and/or graphic and related materials) to be incorporated into the Web Site;
  (ii) provision of any other information, ideas or suggestions which are to be expressly considered by HiHo in developing the Web Site.
  (b) The Customer will ensure that HiHo is given such information and assistance (including access to computer systems and other locations to complete a branding project) as HiHo reasonably requires to enable HiHo to construct and maintain the Web Site.
  - Subject to clause 20.3, the Customer shall supply access to any computer system, usernames and passwords required to remove data and/or sites for failure to comply with these terms and conditions.
  - with these terms and conditions:

    (i) It shall be the Customer's responsibility to ensure that any specific requirements they may have for mobile web browsers is included in the brief, as, unless otherwise specified therein, the choice of web browsers and technology used in the development of the Web Site shall be at the sole discretion of Hilho. In the event that additional Services are requested, or required (as per clause 8.1(b)), in order to meet any specific requirements for mobile web browsers, after Hilho has commenced work on the Web Site, shall be treated as a variation to the Charges, and a strict estimation of further work required shall be submitted to the Customer for approval before proceeding with the variation work.

    (Hillo will not be responsible for, and accepts no liability for, any deficiency or alleged deficiency in the Web Site which is attributable to:

    - (i) incorrect information provided by the Customer, either pursuant to this dause or
    - (ii) failure by the Customer to provide relevant information, either pursuant to this
    - (iii) any third-party products and/or services used by HiHo in creation of the Web Site.

- Proof Reading:

  (a) Whilst every care is taken by HiHo to carry out the instructions of the Customer, it is the Customer's responsibility to undertake proof reading and provide feedback (where necessary). HiHo shall be under no liability whatsoever for any errors not corrected by the Customer during the proof reading stages, and:

  (i) should the Customer's alterations require additional proofs this shall be invoiced.
- (i) should the Customer's afterations require autinizing processing an an extra;
  as an extra;
  (ii) if, at any stage the Customer is unhappy with the direction the Services are taking, the Customer can cancel this Contract and pay HiHo for work completed up to that date of cancellation.

  (b) When style, type or layout is left to HiHo's judgement and the Customer makes further afterations, this will be invoiced as an extra.
- numer alterations, this will be invoiced as an extra. Hilho will make one (1) set of minor changes at no extra cost within fourteen (14) days of the review period. Minor changes include small text changes and small adjustments to placement of items on the artwork. It does not include changes to images, colour schemes, or any navigation features. Any minor changes need to be notified to HiHo via email.

- Should the Customer fail to notify HHo in writing of any amendments within fourteen (14) days from the commencement of the review period, HiHo shall deem that the original draft as being acceptable. 
  stomer's Property and Materials: Graphic files should be supplied in an editable, vector digital format and photographs in a high resolution digital format. If the Customer chooses to purchase stock photographs, HiHo can suggest stock libraries. In the case of property and materials left with HiHo without specific instructions, HiHo shall be free to dispose of them at the end of twelve (12) months after their receiving them and to accept and retain the proceeds, if any, to cover their own costs in holding and handling them.
- Where materials or equipment are supplied by the Customer, HiHo accepts no responsibility for imperfect work caused by defects in or unsuitability of such materials or equipment.

8.5

- Maintenance:
  (a) Subject to sub-clause (b), HiHo will provide the Maintenance Services in accordance with the maintenance terms set out in HiHo's maintenance schedule.
  (b) The Customer will procure all necessary authorisations, licences and consents to enable HiHo to have access to the Web Site in order to provide the Maintenance Services.

- Hosting Services
  "Live Date" means the date in which HiHo provides the Hosting Services as per initial acceptance of HiHo's quotation.
  Hosting Services shall only be used by the Customer for lawful purposes. Any use which 9. 9.1
- Hosting Services shall only be used by the Customer for lawful purposes. Any use which violates any applicable national or international laws is strictly porhibited (e.g. posting or transmitting any unlawful, threatening, abusive, libelous, defamatory, obscene, offensive, indecent, pomographic, profane, or otherwise objectionable information of any kind—including, but not limited to, any transmission constituting or encouraging conduct that would constitute a criminal offense or give rise to civil liability). Hosting Services exclude domain registrations and SSL Certificates, and where the Customer is changing from another hosting provider the install and set-up of the Web Site on HiHo's webservers, which shall be charged to the Customer additionally. HiHo will, at its sole cost and expense:

  (a) host the Web Site on HiHo's webservers;

  (b) ensure that from the Live Date:

  (i) sufficient capacity is manifianed on HHo's webserver to enable users access to the Web Site in a timely manner.

  (ii) the Web Site is accessible to users in accordance with the agreed service levels (subject to reasonable downtime for server maintenance which has been notified to the Customer prior to the commencement of the downtime or (where applicable) Maintenance in accordance with clause 30;

  (c) provide the Customer with reasonable access to the Web Site to perform maintenance services. 9.2
- - - maintenance services.

- HiHo will not:
- maintenance services.

  HiHo will not:

  (a) after or amend, or permit any person to after or amend the Web Site without the written consent of the Customer;

  (b) post or display on the Web Site any advertisement, sponsorship or promotion without the written consent of the Customer;

  (c) use any user data for marketing, referral or other purposes except as expressly authorised by this Contract;

  (d) sub-licence, rent, time-share, lease, lend or grant any rights to use the Web Site; or (e) assign, transfer or authorise anyone else to exercise the rights in any licence granted pursuant to this Contract.

  HiHo will make best efforts to ensure that the Customer receives continual and uninterrupted Services (including network or hosting servers) during the term of this Contract, however HiHo does not in any way warrant or otherwise guarantee the availability of the Services, which shall be subject to regularly scheduled maintenance cycles, and many ventrisdicrusstances beyond the control of HiHo. In no event though, shall HiHo be liable to the Customer for damages (including loss of income) resulting from or in relation to any failure or delay including server downtime, programming errors, lack of connection or slow connection) of HiHo to provide Services under this Contract, or any loss of data, if such delays or failures are due to circumstances beyond our control. Such a failure or delay shall not constitute a default under this Contract.

  HiHo may, at their sole discretion, limit or deny access to the Services is, in the judgement of HiHo, such limitations or denials of access are required to assure the security of the network, the integrity of the network structure, or to prevent damage to the network.

  Web Site Maintenance Services:

  (a) Subject to clause (b), HiHo will provide the Web Site Maintenance Services in accordance with the maintenance terms set out in HiHo's smaintenance services in accordance with the maintenance Services in the HiHo's smaintenance services in accordance with the maintenance Services
- - The Customer will procure all necessary authorisations, licences and consents to enable Hilho to have access to the Web Site in order to provide the Maintenance

### Services. Customer's Obligations: 99

- Customer's Obligations:

  (a) The Customer will, at its sole cost and expense:
  (i) subject to any Contract with Hil4o for Web Site Development, develop and maintain the Web Site;
  (ii) provide the content to Hil4o, in such form as reasonably prescribed by Hil4o from time to time, and hereby grants Hil4o a non-exclusive, worldwide, irrevocable licence to use such content for the purposes of hosting the Web Site;
  (iii) do all things reasonably necessary to enable Hil4o to host the Web Site on Hil4o's webserver;
  (iv) change the type of hosting account used if that account is deemed by Hil4o to be unacceptable because of poor service, lack of bandwidth or in any other way insufficient to support the Web Site;
  (v) is responsible for any fees payable and due to previous hosting organisations engaged by the Customer;
  (vi) ensure that content supplied to Hil4o do not contain Prohibited Content, a link to any web site that contains Prohibited Cortent, or any viruses, trojan horses,

  - any web site that contains Prohibited Content, or any viruses, trojan horses, worms, time bombs, cancel bots or any other software program or routine designed for or capable of interfering with the operation of the Hosting Services.

  - The Customer will not:

    (i) logon to an account that the Customer is not authorised to access;

    (iii) access data or take any action to obtain services not intended for the Customer,

    (iii) attempt to probe, scan or test the vulnerability of any system, subsystem or network:
- network;
  (iv) tamper, hack, modify or otherwise corrupt or breach security or authenticity measures without proper authorisation;
  (v) transmit any material outlined in clause 9,9(a)(vi);
  (vi) do anything that prevents or hinders HiHo from providing Hosting Services to any other person.

  The Customer acknowledges that spamming (i.e. the sending of unsolicited email), email address cultivation, or any unauthorised collecting of email addresses without prior notification of the email address owner is strictly prohibited.

- Network Traffic:

  (a) Network traffic shall be measured by HiHo and may include all forms of traffic to and from the Web Stle. HiHo reserve the right to suspend Hosting Services (at any time and without notice to the Customer) for what it deems to be excessive traffic usage.

  Limitation of Liability for Hosting Services

  (a) in consideration of clause 26.3, in the event the Hosting Services provided to the Customer are disrupted or malfunction for any reason. HiHo's liability shall be limited to damages which under no circumstances shall exceed the amount due and payable by the Customer to HiHo for the Hosting Services during the period of disruption or malfunction.

## Search Engine Optimisation (SEO)

Search Engine Optimisation (SEO)
Although Hill ob shall use their knowledge and experience to gain the best results possible, Hill o gives no guarantee of the quality of visitor or the position / page rank or volume of visits to the Web Site, or warranty that the Web Site will be effective in promoting the Customer's business or result in any increase in sales of the products/services of the Customer. Periodic reporting will be sent to the Customer's nominated email address, at the sole discretion of Hillo.

### Domain Registration 11. 11.1

Where HiHo is to register a domain name on the Customer's behalf, HiHo cannot guarantee the availability of the domain name, nor assume a successful registration or such a name.

- Risk and Limitation of Liability for Customer Data
  The Customer shall provide HHo with data in the following formats:
  (a) for text, files shall be in an electronic format as standard text (.txt) or Work (.doc) on a USB, CD-ROM or via email;
  (b) for imaged, in an electronic format as prescribed by HHo on a USB, CD-ROM or via email with the images of a suitable quality applicable for the use intended and without any subsequent image processing being meguined. HHo shall not be responsible for the quality of images scanned from printed materials:
- uniquemy or initiges scanned noth primed materials;
  (c) additional expenses may be charged to the Customer for any necessary action, including, but not limited to, photography and art direction, photography searches, media conversion, digital image processing or data entry services.

  The Customer acknowledges and agrees that HiHo shall not be held responsible or liable for.

## Live Longer Limited T/A HiHo – Terms and Conditions

- anything related to the Web Site, Hosting Services or any other Services provided any supplied content breaching any Acts, legislation or regulations, unless due to negligence of Hirlo; any loss, corruption, or deletion of files or data (including, but not limited to soft programmes) resulting from illegal hacking or Services provided by Hirlo. W Hirlo will endeavour to restore the Web Site, files or data (at the Customer's cos is the sole responsibility of the Customer to back-up any data which they believe be important, valuable, or irreplaceable prior to Hirlo providing the Services. Customer accepts full responsibility for the Customer's software and data and is not required to advise or remind the Customer of appropriate backup proced (unless included as part of the Services); (c) (unless included as part of the Services)
- any loss or damage to the Customer's software or hardware caused by any 'updates' provided for that software.
- provided for that sortware. HIHO, its directors, agents or employees will not be liable in any way for any form of loss or damage of any nature whatsoever suffered, whether arising directly or indirectly, by the Customer or any person related to or dealing with the Customer or ut of, in connection with or reasonably incidental to the provision of the Services by HiHo to the Customer. The Services are provided on an 'as is, as available' basis. HiHo specifically disclaims any other warranty, express or implied, including any warranty of merchantability or fitness for a particular purpose. Public Access:
- 12.5
  - life Access:

    The Customer understands that by placing information on the Web Site, such information may be accessible to all internet users. Hitho does not (unless expressly requested by the Customer) limit or restrict access to such information, nor protect such information from copyright infringement or other worngful activity. The Customer assumes full responsibility for their use of the Services, and it is the Customer's sole assumes tain responsibility to evaluate the accuracy, completeness and usefulness or all opinions, advice, services, and other information, and the quality and merchantability of all Services provided by HiHo, or on the internet generally.

### Defects, Errors, Omissions and Warranty

- Defects, Errors, Omissions and Warranty
  The Customer shall inspect the Products on delivery and shall within five (5) days of
  delivery (time being of the essence) notify HiHo of any alleged defect, shortage in
  quantity, damage or failure to comply with the description or quote. The Customer shall
  afford HiHo an opportunity to inspect the Products within a reasonable time following
  delivery if the Customer believes the Products are defective in any way, if the Customer
  shall fail to comply with these provisions the Products shall be presumed to be free from
  any defect or damage. For defective Products, which HiHo has agreed in writing that the
  Customer is entitled to reject, HiHo's liability is limited to either (at HiHo's discretion)
  replacing the Products or repairing the Products.

  Products will not be accepted for return other than in accordance with 13.1 above, and
  provided that:
- provided that:

  - HiHo has agreed in writing to accept the return of the Products; and the Products are returned at the Customer's cost within ten (10) days of the delivery (b) date; and HiHo will not be liable for Products which have not been stored or used in a proper
- (c) Hirld will not be liable for Products which have not been stored or used in a programmer, and and officially the Products are returned in the condition in which they were delivered and with packaging material, brochures and instruction material in as new condition as reasonably possible in the circumstances.
  For defective Services, which Hirld has agreed in writing that the Customer is entitled reject, Hirld's liability is limited to either (at Hirld's discretion) replacing the Services ectifying the Services provided that the Customer has complied with the provisions clause 13.1.
- cause i.s.i.
  For Products not manufactured by HiHo, the warranty shall be the current warranty provided by the manufacturer of the Products. HiHo shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Products. 13.5

## Protection of Reputation

Any misuse, misrepresentation or any other action that negatively impacts the Provider's brand which is deemed to damage and/or tarnish the reputation of the Provider's brand, the Customer must cases and desist from such misuse, misrepresentation or other action immediately on receipt of a written notice from the Provider to this effect.

- the Ho and the Customer agree that the Customer's obligations to HiHo for the supply of rivices shall not cease (and ownership of any Products shall not pass) until: the Customer has paid HiHo all amounts owing to HiHo for the Services; and the Customer has met all other obligations due by the Customer to HiHo in respect of all contracts between HiHo and the Customer.

  - Receipt by HiHo of any form of payment other than cash shall not be deemed to be
- 15.2 payment until that form of payment has been honoured, cleared or recognised, and until then HiHo's ownership or rights in respect of the Services, and this Contract, shall It is further agreed that, until ownership of the Products passes to the Customer in
- accordance with clause 15.1:
  (a) the Customer is only a bailee of the Products and must return the Products to HiHo

  - the Customer is only a balee of the Products and must return the Products to Hinto on request.

    the Customer holds the benefit of the Customer's insurance of the Products on trust. for HiHo and must pay to HiHo the proceeds of any insurance in the event of the Products being lost, damaged or destroyed.

    the Customer must not sell, dispose, or otherwise part with possession of the Products other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Products then the Customer must hold the proceeds of any such act on trust for HiHo and must pay or deliver the proceeds to HiHo on demand.
  - (d) the Customer should not convert or process the Products or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of HiHo and must sell, dispose of or return the resulting product to HiHo as it so directs.
  - Hillro as it so drects.

    (e) the Customer irrevocably authorises Hillro to enter any premises where Hillro believes the Products are kept and recover possession of the Products.

    (f) Hillro may recover possession of any Products in transit whether or not delivery has

  - occurred.

    the Customer shall not charge or grant an encumbrance over the Products nor grant nor otherwise give away any interest in the Products while they remain the property
  - nor otherwise give any man, man, of Hillo.

    Hillo may commence proceedings to recover the Charges notwithstending that ownership of the Products has not passed to the Customer.

- Personal Property Securities Act 1999 ("PPSA")
  Upon assenting to these terms and conditions in writing the Customer acknowledges and expect better. es that:
  - these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - (b) a security interest is taken in all Products and/or all collateral (account) being a monetary obligation of the Customer for the Services – that have previously been provided, and that will be provided in the future, by HiHo to the Customer.
- provided, and that will be provided in the future, by HiHo to the Customer.

  The Customer undertakes to:
  (a) sign any turther documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which HiHo may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  (b) indemnify, and upon demand reimburse, HiHo for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any registration made thereby;
  (c) not register a financing change statement or a change demand without the prior written consent of HiHo.

  HiHo and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

  The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.

  The Customer shall unconditionally ratify any actions taken by HiHo under clauses 16.1 to 16.5.
- 16.3
- 16.5

- Security and Charge
  In consideration of Hilho agreeing to provide the Products/Services, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

  The Customer indemnifies HiHo from and against all HiHo's costs and disbursements
- 17.2 including legal costs on a solicitor and own client basis incurred in exercising HiHo's rights
- The Customer irrevocably appoints HiHo and each director of HiHo as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of

this clause 17 including, but not limited to, signing any document on the Customer's

- Intellectual Property and Confidentiality
  Where HiHo has designed, drawn or developed Services (including the Web Site) for the
  Customer, HiHo retains full infedeudal property ownership of the Services, including the
  copyright in any designs and drawings and documents, and HiHo hereby grants to the
  Customer an irrevocable, non-exclusive and non-transferable licence to use the Services.
- Customer an irrevocable, non-exclusive and non-transferable licence to use the Services solely in relation to the operation of the Customer's own business, conditional upon the Customer fulfilling their obligations under this Contract (including, but not limited to, the full payment of the Charges). Subject to the Copyright Act 1994 and the conditions therein, where Hilto or their subcontractor has provided the Customer with a licence for use on any design, copy, writing, drawing, image, illustration, idea or code created for the Customer, the licence shall be for use by the Customer on a one-time only basis and may not be modified, reused, or re-distributed in any way or form without the express permission of Hilto and any of its relevant subcontractors. of its relevant subcontractors.
- of its relevant subcontractors.

  All design work where there is a risk that another party makes a claim, should be registered by the Customer with the appropriate authorities prior to publishing or first use or searches and legal advice sought as to its use. Hitle shall not be held responsible for any or all damages resulting from such claims.

  The Customer hereby authorises thill to utilise images of the Services created by Hitle in adventising, marketing, or competition material by Hitle including, but not limited to:

  (a) the Customer permitting Hitle to place a small credit on printed material exhibition (a) displays, advertisement and/or link to Hitle's own web site on the Customer's Web Site subjets beat lust sall by the form of a small conor fire of text placed traverte.
- - Site, which shall usually be in the form of a small logo or line of text placed towards
  - Site, which stall usually be in the form of a small rogo or line or text placed diwards the bottom of the page; allowing HiHo to place web sites and other designs, along with a link to the Customer's Web Site on HiHo's own web site for demonstration purposes and to use
- Customer's Web Site on HiHo's own web site for demonstration' purposes and to use any designs in HiHo's own publicity.

  The Customer shall indemnify HiHo against any claims by third parties for patent, trademark, design or copyright infingement, directly or indirectly arising out of the design, workmanship, material, construction, or use of the Services or any other deficiency therein. Where the Customer has supplied drawings, sketches, files or logo's to HiHo, the Customer warrants that the drawings, sketches, files or logo's do not breach any patent, trademark, design or copyright, and the Customer agrees to indemnify HiHo against any cation taken by a third party against HiHo.

  Notwithstanding anything herein, the Intellectual Property Rights in HiHo's Services do not vest in the Customer and there is no assignment of these Intellectual Property Rights to the Customer. HiHo hereby grants to the Customer an irrevocable, non-exclusive and non-transferable licence to use and reproduce the Services for the purposes of this Contract only, and solely for the operation of the Customer's business however, the
- Customer shall not use nor make copies of such Intellectual Property in connection with Customer shall not use nor make copies of such Intellectual Property in connection with any work or business other than the work or business specified in writing to Hild ourless express approval is given in advance by Hilfo. Such license shall terminate on default of payment or any other terms of this Contract by the Customs of Ali Flash, PHP, Java Script, HTML and Dynamic HTML coding and other supplied code (if any) remains the intellectual property of Hilfo. Copying or disseminating the code for any purpose whatsoever is shrictly fortided and will be a breach of copyright. Each party agrees to treat all information and ideas communicated to it by the other confidentially and agree not to divulge it to any third party, without the other partys written consent. The parties will not copy any such information supplied, and will either return it or destroy it (together with any copies thereof) on request of the other party.

### Consumer Guarantees Act 1993 **19.** 19.1

If the Customer is acquiring Services for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Services by HiHo to the Customer.

### Default and Consequences of Default

Interest on overdue invoices shall accrue daily from the date when payment becomes

- Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (25%) per calendar month (and at HiHOs sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

  If the Customer owes HiHo any money the Customer shall indemnify HHo from and against all costs and disbursements incurred by HiHo in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, HiHo's collection agency fees, and bank dishonour fees). Further to any other rights or remedies HiHo may have under this contract, if a Customer has made payment to HiHo, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by HiHo under this clause 20 where it can be proven that such reversal is found to be liteal. Faudulent or in contravention to the Customer's obligations under this to be illegal, fraudulent or in contravention to the Customer's obligations under this
- Without prejudice to any other remedies HiHo may have, if at any time the Customer is in breach of any obligation (including those relating to payment, whether or not the payment is due to HiHo) HiHo may suspend or terminate the provision of Services to the Customer, (this includes but is not restricted to, withholding domain codes, passwords and Products, and/or blocking or restricting public and Customer access to the Web Site, or removing the Web Site from the web completely) and any of its other obligations under the terms and conditions. HiHo will not be liable to the Customer for any loss or damage the Customer suffers because HiHo has exercised its rights under this clause. Without prejudice to HiHo's other remedies at law HiHo shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to HiHo shall, whether or not due for payment, become immediately payable if:

  (a) any money payable to HiHo becomes overdue, or in HiHo's opinion the Customer will be unable to make a payment when it falls due;

  (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors, or Without prejudice to any other remedies HiHo may have, if at any time the Customer is in

- of its creditors; or
- of its creditors; or a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

- Cancellation and Termination
  HiHO may cancel these terms and conditions or cancel provision of the Services at any
  time before the Services are provided by giving written notice. HiHO shall not be liable for
  any loss or damage whatever arising from such cancellation.
  In the event that the Customer may cancel provision of the Services. In the event that the
  Customer cancels provision of the Services the Customer shall be liable for any costs
  incurred by HiHO (including, but not limited to, loss of profit) up to the time of cancellation.
  Where the Customer cancels an order. 21.3
  - the initial notification may be by telephone or email but must be confirmed in writing within fourteen (14) days
  - (b) the Customer shall be invoiced for all work completed over and above the nonrefundable deposit as per clause 4.4
  - where failure clause 21.3(a) occurs, the Customer shall be required to pay the full quoted cost of the Services.
- quoted cost of the Services.

  Should the Customer, for any reason, cause the Services to be delayed for more than three (3) months after the acceptance date, this Contract will be terminated by HiHo (at their sole discretion) and all Services completed, but not billed or paid, will be payable in full within fourteen (14) days from the date of the submitted invoice.

  If the Customer fails to comply with any of the provisions of this Contract and does not rectify such non-compliance within seven (7) days of HiHo giving notice either in writing, via fax or email, then HiHo may without prejudice to any other rights or remedies, and without being liable to the Customer for any loss or damage that may result, give notice to the Customer the Customer shall so ell night to use the Web Site and products, and shall forthwith deliver the Products to HiHo and destroy all copies made. The Customer shall certify in writing that the copies have been destroyed.
- 21.6

- termination of the contract, the Customer start lose at Ingint to use the tweb Site and products, and shall forthwith deliver the Products to HiHo and destroy all copies made. The Customer shall certify in writing that the copies have been destroyed. Upon termination of this Contract, HiHo will immediately delete all files and content relating to the Customer and the Services provided thereto. It is the Customer responsibility to make arrangements for the transfer of their data prior to the termination date. HiHo accepts no liability for any loss or damage incurred by the Customer as a result of the deletion of such data. In the event the Services are terminated as per clauses 21.3 or 21.5, the Services can be re-instated under a new contract at the prevailing rates, however no credits or discounts will be granted and reinstatement costs shall apply. Fixed Ferm Contracts

  (a) Where this contract relates to a fixed term contract, all payments shall fall due as per the payment schedule. To terminate the fixed term contract on, or after, the current annual term, the Customer must give HiHo not less than thewnly (20) working days notice prior to the current anniversary date of this Contract. The Services will then terminate at the end of the then current annual term, if the Customer does not terminate the Services on expiry of the current annual term, the Services shall revert to a month-by-month basis charge until otherwise agreed by both parties. Any additional Services shall become due and payable until notice (as herein) is received. additional Services shall become due and payable until notice (as herein) is received

Privacy Policy
All emails, documents, images or other recorded information held or used by HiHo is
Personal Information as defined and referred to in clause 22.3 and therefore considered

- confidential. HiHo acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ('the Act') including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area 'EEA' fren the EU Data Privacy Laws (including the General Data Protection Regulation 'GDPR') (collectively, 'EU Data Privacy Laws'). Hillo acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customers Personal Information, held by Hillho that may result in serious harm to the Customer, Hillo will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law. Notwithstanding dause 221, privacy irmations will extend to Hillho in respect of Cookies where transactions for purchases/orders transpire directly from Hillho's website. Hillho agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:

  (a) IP address, browser, email client type and other similar details;
- - Inturnation such as the Customers:

    (a) IP address, browser, enail client type and other similar details;

    (b) tracking website usage and traffic; and

    (c) reports are available to Hillio when Hillio sends an email to the Customer, so Hillio may collect and review that information ("collectively Personal Information") in order to enable / disable the collection of Personal Information by way of Cookies, the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable the Cookies first by selecting the option to enable / disable the Cookies first by selecting the option to enable / disable.
- 22.3
- HiHo's website.

  The Customer authorises HiHo or HiHo's agent to:

  (a) access, collect, retain and use any Personal Information about the Customer;

  (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditiventhiness or

  - Ministry of Justice) for the purpose of assessing the Customer. Conditivation of the purpose of marketing products and services to the Customer. (b) disclose Personal Information about the Customer, whether collected by HiHo from the Customer directly or obtained by HiHo many other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer. Where the Customer is an individual the authorities under clause 22.3 are authorities or consents for the purposes of the Privacy Act 1993.

    The Customer shall have the right to request HiHo for a copy of the Personal Information about the Customer retained by HiHo and the right to request HiHo to correct any incorrect Personal Information about the Customer retained by HiHo and the right to request HiHo to correct any incorrect Personal Information about the Customer held by HiHo.

- Service of Notices Any written notice given under this Contract shall be deemed to have been given and

  - by handing the notice to the other party, in person; by leaving it at the address of the other party as stated in this Contract; by sending it by registered post to the address of the other party as stated in this
- Contract;

  (if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;

  (e) if sent by email to the other party's last known email address. Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been 23.2

- Trusts

  If the Customer at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ('Trust') then whether or not HiHo may have notice of the Trust, the Customer covernants with HHo as follows:

  (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;

  (b) the Customer has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the night of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.

  (c) the Customer will not without consent in writing of Hilliof (Hilliow will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events, (i) the removal, replacement or retirement of the Customer as trustee of the Trust; (ii) any alteration to or variation of the terms of the Trust; (iii) any advancement or estimated the Trust; (iii) any advancement or estimated the Trust; (iii) are advancement or estimated the Trust or t
- - any advancement or distribution of capital of the Trust; or
- (iv) any resettlement of the trust property
- Dispute Resolution HiHo and the Customer will negotiate in good faith and use their reasonable efforts to nind and the Customer win highpitial in good lattri and use their resistrative elements to settle any dispute that may arise out of, or relate to, this Contract, or any breach thereof. If any such dispute cannot be settled amicably through ordinary negotiations, the dispute shall be referred to the representatives nominated by each party who will meet in good faith in order to attempt to resolve the dispute. Nothing shall restrict either party's freedom to commence legal proceedings to preserve any legal right or remedy or protect and proprietary or trade secret right.

- General
  The failure by either party to enforce any provision of these terms and conditions shall not
  be treated as a waiver of that provision, nor shall it affect that party's right to subsequently
  enforce that provision. If any provision of these terms and conditions shall be invalid, void,
  illegal or unenforceable the validity, existence, legality and enforceability of the remaining
- provisions shall not be affected, prejudiced or impaired.

  These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Auckland Courts of New 26.2
- the laws of New Zealand and are subject to the Justice of the Customer for any expenses, claims, Zealand.
  HiHo shall be under no liability whatsoever to the Customer for any expenses, claims, costs (including but not limited to legal fees and commissions), damages suffered or incurred by HiHo, or indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by HiHo of these terms and this Contract, or that arise from any claim relating to the Services by any person that the Customer authorises to use the Services, or where due to server downtime or programming errors (alternatively HiHo's liability shall be limited to damages which under no circumstances shall exceed the Charges).
  HiHo may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.

- Contract without the Customer's consent.

  The Customer cannot licence or assign without the written approval of HiHo.

  The Customer cannot licence or assign without the written approval of HiHo.

  HiHo may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of HiHo's sub-contractors without the authority of HiHo.

  The Customer agrees that HiHo may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer request for HiHo to provide Products and/or Services to the Customer makes a further request for HiHo to provide Products and/or Services to the Customer.

  Neither party shall be liable for any default due to fires, explosions, severe weather, industrial disputes, insurrection, requirements or regulations, or any civil or military authority, acts of war (whether declared or not), civil urrest, eacts of God, earthquake, flood, inct, embargo, government act, strike, lock-out, storm, terrorism, or failure or outage of any telecommunications links or other connections forming part of the Internet which are beyond the reasonable control of either party.
- to any telecommunications in the confection similar of united many are beyond the reasonable control of either party.

  Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.