

ProTech

Terms and Conditions: ON-SITE

This document sets out the terms and conditions upon which ProTech Limited, trading as ProTech, will provide you Services and/or Products.

By arranging a Call Out by one of our representatives, you agree to be bound by these Terms and Conditions.

1. DEFINITIONS

1.1 In these Terms and Conditions:

“Hours” means 8am – 6pm on any Day;

“Call Out” means a single on-site visit made by us for the purpose of providing Services and/or Products;

“Cancellation Fee” means a fee of \$75.00 incl. GST for cancelling a Call Out other than in accordance with clause 2.2; and which is intended to recompense us for our reasonable costs incurred in responding to your Call Out which you have not cancelled in reasonably adequate time.

“Fees” means, for each Call Out, the applicable Minimum Call Out Fee plus the applicable Incremental Fee set out below plus any Product Fee:

All prices are plus of GST	Minimum Charge	Incremental Fee
Standard Call Out within the Wellington Region	\$120.00	\$25.00 /quarter hour

The Incremental Fee applies for each stated period after the first hour of the Call Out. The period of each Call Out within the Region will commence from the time we arrive at your premises. The period for each Call Out outside the Region includes our travel time. Minimum Call Out Fees outside Working Hours will apply where any of the first hour of the Call Out is outside Working Hours. Incremental Fees outside Working Hours will apply where any of the applicable period for that Incremental Fee is outside Working Hours; Being 8am to 6pm.

“Information” has the meaning given to that term in clause 6.2;

“Products” means any hardware, software or other products provided by us and for clarification it is important to note clause 5.8 of these Terms and Conditions relating to the purchase of software;

“Product Fees” means the fees or cost quoted by us for any Product purchased by you;

“Region” means the region of operation being the greater Wellington Region as defined in our website.

“Services” means the on-site computer maintenance, support and/or consulting services reasonably **requested by you and provided by us during a Call Out;**

“Terms and Conditions” means these terms and conditions;

“We”, “us” or “our” means the company detailed above trading as ProTech;

“Working Day” means any day other than a Sunday, a statutory public holiday in the Region or a Saturday in relation to which the previous Friday or following Monday is a statutory public holiday in the Region;

“Working Hours” means 8.00am to 6.00pm on any Working Day; and

“you” or “your” means the customer its agent and employees or any person acting on behalf of and with the authority of the customer that requested the Call Out.

2. CALL OUTS

2.1 Where you arrange a Call Out, we will attend the premises for that Call Out at the arranged time.

2.2 To cancel or stop a Call Out, you must advise one of our operators at least with two hours' notice. If you cancel a Call Out other than in accordance with this clause 2.2, you must pay a Cancellation Fee for that Call Out.

3. SERVICES

3.1 In consideration of the Fees, we will perform the Services in accordance with these Terms and Conditions.

3.2 At the beginning of the Call Out:

(a) we will try to diagnose any problem described by you; and

(b) we may provide an estimate of the time required to provide any Services.

However, we do not guarantee any diagnosis or estimate of time will be accurate.

3.3 The duration of the Call Out will be agreed with you. If the Services are not complete within that duration, we will discuss the options available, which may include extending that Call Out, arranging another Call Out or abandoning the Services. You may stop a Call Out at any time subject to clause 2.2.

3.4 Regardless of clauses 3.2 or 3.3, once a Call Out commences, you must pay the Fees for that Call Out, including the Minimum Call Out Fee.

3.5 To enable us to undertake the Services:

(a) you must provide us with all information, assistance, co-operation and access to premises and equipment that we may reasonably require to undertake the Services; and

(b) you, or some person over 16 years, must be present while we provide the Services.

- 3.6** We will use reasonable endeavours to achieve the objectives of the Services but we provide no guarantee, express or implied that the objective will be achieved and we will not be liable for any failure to meet the objectives provided we have used our reasonable endeavours.

4. PRODUCT OWNERSHIP AND RISK

- 4.1** Where agreed with you, we will provide Products as part of a Call Out and subject to these Terms and Conditions.
- 4.2** Ownership of products remains with us until payment is made in full from cleared funds for the Products.
- 4.3** We supply the Products to you on condition that we have a purchase money security interest (as defined by the Personal Property Security Act 1999) in the Products.
- 4.4** If you fail to make payment in whole or part for the Products you have ordered, we may re-possess and re-sell or retain the Products and may for that purpose enter upon your premises or any other premises upon which the Products are situated at any time and without notice and without being in any way liable to you or any other person or entity.
- 4.5** The risk of any loss or damage to any of the Products sold, or deterioration of the Products, due to any cause whatsoever shall pass to you upon delivery of the Products. If the Products remain in our possession owing only to the failure by you to accept the Products at your request, such Products shall be at your risk in any event.

5. PAYMENT

- 5.1** We will invoice the Fees for each Call Out at the end of the Call Out and you must pay those Fees to us at the end of the Call Out ("the Due Date"), at the time the Technician is on premises.
- 5.2** Any other amounts payable under these Terms and Conditions, including Cancellation Fees, will be payable immediately upon issuance of our invoice.
- 5.3** Depending upon whether any further services or work may be required to be carried out by us following out diagnosis of the problem described by you or any Products you may order to be supplied to you, we may require a deposit to be paid by you on account of any additional service cost we may reasonably incur or on account of the Product Fees.
- 5.4** Payment must be made online, approved credit card or internet banking. If using internet banking, you must provide us a printed copy of the confirmation of payment printed from your internet banking screen at the completion of the Call Out.
- 5.5** Should you not pay on time, you must pay interest to us at the rate of 15% per annum from the Due Date until the date payment is received by us in full and you must pay any additional administration and debt collection costs (including legal costs).
- 5.6** If your account is in default, we may cease work on any matter for you until the default is remedied.

- 5.7** Without prejudice to any other right or remedy we may have against you, if you fail to make payment of any monies due to us on the Due Date in respect of any work or installation we may have carried out on your computer while in our possession, you accept that we may at our discretion retain a worker's lien over your computer which we have worked on, pursuant to the provisions of the Wages Protection and Contractors Liens Repeal Act 1987 until payment is made by you, plus any costs. Unless a commercial account is set up and agreed to, payment is due in 7 days.

IMPORTANT NOTICE:

- 5.8** You acknowledge and agree that if you have ordered Products comprising software by electronic delivery and that software has been installed by us and the software licence is activated either on your computer or a computer you have agreed to purchase, then it is not reasonably practicable to remove the software installation or de-activate the software. In that event and for that reason once you have ordered the software with the instruction to proceed with installation, you agree that you shall be committed to that purchase of the software and subject to these Terms and conditions and the software cannot be returned unless we agree otherwise pursuant to a specific individual agreement made with you by us at our discretion, within seven days of invoice.

- 5.9** Once you have confirmed your order with us for the supply of any Products, then unless we are unable to supply such Products upon the terms specified, you will be committed to the purchase of those Products and have no right of cancellation or refund of monies paid but subject at all times to these Terms and Conditions and your rights under the Consumer Guarantees Act 1993 and the Fair Trading Act 1986, if applicable, unless we agree otherwise pursuant to a specific individual agreement made with you by us at our discretion, within seven days of invoice. We reserve the right in any such specific individual agreement to claim recovery of the reasonable administration and other cost we have incurred.

6. CONFIDENTIALITY AND PRIVACY

- 6.1** We will maintain as confidential all information we obtain from you in providing the Services and will not use that information for any reason other than as necessary for providing the Services. This obligation will not apply to information that is in the public domain or that is known to us or obtained by us without breaching any obligation to you or that we are required to disclose by law.
- 6.2** You authorise us to collect, retain, use and provide to our staff and agents any personal information ("Information") about you for the purposes of credit approval, meeting our obligations to you, marketing, and enforcing our rights against you.

7. WARRANTY

- 7.1** We warrant that we will use reasonable skill and care in undertaking the Services.

- 7.2** No warranty is given for the Products where any failure or defect results from:

(a) improper storage or handling of the Products by you, your employees, agents or customers;

(b) use, installation, modification or alteration (including repair) of the Products other than as recommended or authorised in writing by the manufacturer or us;

(c) fair wear and tear on the Products;

(d) failure to maintain the Products in accordance with any care or maintenance instructions provided by us or the manufacturer; or

(e) any other matter or event specified in relation to a specific Product as invalidating or being excluded from any warranty.

7.3 Except as otherwise provided in the Consumer Guarantees Act 1993 and the Fair Trading Act and subject to clause 8.1 of these terms and conditions your sole remedy in relation to the breach of any warranty under this agreement or at law, in relation to any:

(a) Service, to the extent permitted by law, our obligations are limited to the resupply or to re-perform such Services to a reasonable standard; or

(b) Product, will be for us to repair or replace such Product, at our option, provided that if neither option is available to us (as determined solely by us) we may refund the price paid for that Product.

7.4 We have no obligation to install, customise or provide any other Service in relation to any Products repaired or replaced due to a breach of any Product warranty.

7.5 You acknowledge that if the Services or Products are supplied for business purposes in terms of the Consumer Guarantees Act 1993 the guarantees provided under that Act do not apply.

7.6 Other than the warranties set out in these Terms and Conditions, all other express or implied warranties in respect of the Services and Products are excluded to the fullest extent permitted by law including, but not limited to, implied warranties of merchantability or fitness for a particular purpose. All statements, technical information and recommendations made by the manufacturer and/or us about the Services or Products are believed to be reliable, but do not constitute a guarantee or warranty express or implied by us to you.

7.7 You warrant that you are authorised to arrange each Call Out and, in providing the Services or Products, our access to your premises, use of the equipment, software, information or other material made available by you will not breach any third party rights.

7.8 Your Rights under the Consumer Guarantees Act

Your rights and remedies under the ProTech one-year warranty go over and over and above the Consumer Guarantees Act 1993 (CGA).

Under the Consumer Guarantees Act:

All Products Must:

- be of acceptable quality (durable, safe, fit for purpose, free from defects, acceptable in look or finish)
- be fit for any particular purpose you have told the supplier
- match a description, sample or model shown to you
- have good legal title, e.g. be able to be sold and not have any security interests registered against them
- be a reasonable price if no price is set
- arrive on time (within a reasonable time if not agreed) and in good condition
- have spare parts and repair facilities available (manufacturer is responsible). This does not apply if you are told about limited availability before you buy.

If these guarantees are not met, the supplier must remedy the issue by either repair, replacement, or if neither are possible, then a refund of the purchase price.

7.9 ProTech 1-year warranty is applicable to certain products only when specified in writing.

- A one stop shop for handling your repair. If you think part of the hardware inside your computer has failed inside its warranty period, all you need to do is contact us and we can take it from there. We'll assess the issue and if needed collect it from you free of charge, handle any required repair process and then return it to you.
- Priority repairs – if in the unlikely event of any hardware part/s failing inside your computer within the warranty period, we will ensure the machine is repaired as fast as possible.

8. LIABILITY

8.1 The Consumer Guarantees Act 1993, the Fair trading Act 1986 and any other statutes may apply warranties and conditions or impose obligations upon us which cannot by law (or which can only apply to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on us, our liability shall, where it is allowed, be excluded or if not able to be excluded, only apply to the lesser of the minimum extent required by the relevant statute or the fees paid under invoice for the Products or Services.

8.2 Except as otherwise provided in clause 8.1 in no event will we be liable (whether in contract, tort including negligence or otherwise) to you for:

(a) loss of profits or savings, loss of goodwill or opportunity, loss or corruption of data, or wasted staff time; or

(b) loss, damage, cost or expense of any kind whatsoever which is indirect, consequential, or of a special nature, arising directly or indirectly from any Services or Products supplied by us to you, even if we had been advised of the possibility of such loss, damage, cost or expense.

8.3 To the extent allowed by law, our total liability under any claim of any nature arising directly or indirectly from any Service or Product will not exceed the Fees paid by you for that Service or Product.

- 8.4** You indemnify us together with our officers, directors, agents, advisors and employees against any and all liability, losses, damages, costs, penalties and expenses of any nature whatsoever awarded against, incurred or suffered by us, or our officers, directors, agents, advisors and employees whether direct or consequential, arising out of or resulting from your breach of clause 7.7.

9. TERMINATION

- 9.1** We may immediately terminate the agreement between us if we consider:

- (a) you are in breach of these Terms and Conditions;
- (b) there is any threat to the safety of any of our staff or agents;
- (c) there to be the presence of unlicensed or illegal software;
- (d) your equipment contains any pornographic, obscene, offensive or illegal content; or
- (e) you are insolvent, bankrupt, in liquidation, unable to pay your debts, or otherwise an unacceptable credit risk to us.

- 9.2** If we terminate our agreement we will cease to undertake the Services and all Fees incurred up to that time will immediately become payable, plus costs.

10. GENERAL

- 10.1** We will not be liable to you for any breach or delay or failure to perform any of our obligations where such breach or delay or failure is caused by anything beyond our reasonable control, including (without limitation) inability to obtain supplies, war, civil commotion, terrorism, strike, lockout, other industrial act, weather phenomena or other act of God (including any failure by any of our suppliers to supply on time).
- 10.2** New Zealand law governs the formation, validity, construction and performance of these Terms and Conditions.
- 10.3** These Terms and Conditions shall be binding on your legal representation, assignees and successors.
- 10.4** 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.
- 10.5** No failure or delay on our part in exercising any power or right under these Terms and Conditions will operate as a waiver.