MYOB Terms and Conditions of Trade

September 2011

MYOB®

1. Definitions

1.1 "Seller" shall mean MYOB NZ Ltd its successors and assigns or any person acting on behalf of and with the authority of MYOB NZ Limited.

1.2 "Customer" shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form or agreement as provided by the Seller to the Customer.

1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.

1.4 "Goods" shall mean Goods supplied by the Seller to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and includes Goods described on any invoices, quotation, work authorisation or any other forms as provided by the Seller to the Customer.

1.5 "Services" shall mean all services supplied by the Seller to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).

1.6 "Price" shall mean the price payable for the Goods as agreed between the Seller and the Customer in accordance with clause 3 of this contract.

2. Acceptance

2.1 Any instructions received by the Seller from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by the Seller shall constitute acceptance of the terms and conditions contained herein.

2.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.

2.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of the Seller.

2.4 The Customer undertakes to give the Seller at least fourteen (14) days notice of any change in the Customer's name, address and/or any other change in the Customer's details.

3. Price And Payment

3.1 At the Seller's sole discretion the Price shall be either;

(a) as indicated on invoices provided by the Seller to the Customer in respect of Goods supplied; or

(b) the Seller's quoted Price (subject to clause 3.2) which shall be binding upon the Seller provided that the Customer shall accept the Seller's quotation in writing within thirty (30) days.

(c) as indicated in any agreement with the Customer that these terms and conditions may form part of.

3.2 At the Seller's sole discretion a deposit may be required.

3.3 At the Seller's sole discretion;

(a) payment shall be due before delivery of the Goods, or

(b) payment for approved Customers shall be made by instalments in accordance with the Seller's payment plan; or

(c) payment for approved Customer's shall be 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.

3.4 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due fourteen (14) days following the date of the invoice.

3.5 Payment will be made by cheque, or by credit card, or by direct credit, or by any other method as agreed to between the Customer and the Seller.

3.6 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

4. Delivery Of Goods

4.1 At the Seller's sole discretion delivery of the Goods shall take place when;

(a) the Customer takes possession of the Goods at the Seller's address; or

(b) the Customer takes possession of the Goods at the Customer's address (including downloading of software by the Customer); or

(c) the Customer's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Customer's agent.

4.2 At the Seller's sole discretion the costs of delivery are;

(a) in addition to the Price, or

(b) for the Customer's account.

4.3 The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery.

4.4 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.

4.5 The Seller may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.

4.6 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.

4.7 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.

5. Risk

5.1 If the Seller retains ownership of the Goods onetheless, all risk for the Good passes to the Customer on delivery.

5.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

6. Title

6.1 Subject to clause 12. below the Seller and Customer agree that ownership of the Goods shall not pass until:

(a) the Customer has paid the Seller all amounts owing for the particular Goods, and

(b) the Customer has met all other obligations due by the Customer to the Seller in respect of all contracts between the Seller and the Customer.

6.2 Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Seller's ownership or rights in respect of the Goods shall continue.

6.3 It is further agreed that:

(a) where practicable the Goods shall be kept separate and identifiable until the Seller shall have received payment and all other obligations of the Customer are met; and

(b) until such time as ownership of the Goods shall pass from the Seller to the Customer the Seller may give notice in writing to the Customer to return the Goods or any of them to the Seller. Upon such notice being given the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and

(c) the Customer is only a bailee of the Goods and until such time as the Seller has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods on trust for the Seller; and

(d) if the Customer fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Goods are situated as the invitee of the Customer and take possession of the Goods (or remove and dispose of Goods that are installed software), and the Seller will not be liable for any reasonable loss or damage suffered as a result of any action by the Seller under this clause.

7. Personal Property Securities Act 1999 ("PPSA")

7.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:

(a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and

(b) a security interest is taken in all Goods previously supplied by the Seller to the Customer (if any) and all Goods that will be supplied in the future by the Seller to the Customer.

7.2 The Customer undertakes to:

(a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Seller may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;

(b) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;

(c) not register a financing change statement or a change demand without the prior written consent of the Seller; and

(d) immediately advise the Seller of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

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

7.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

7.5 Unless otherwise agreed to in writing by the Seller, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

7.6 The Customer shall unconditionally ratify any actions taken by the Seller under clauses 7.1 to 7.5.

8. Customer's Disclaimer

8.1 The Customer hereby disclaims any right to rescind, or cancel any contract with the Seller or to sue for damages or to claim restitution arising out of any misrepresentation made to the Customer by the Seller and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgement.

9. Defects

9.1 The Customer shall inspect the Goods on delivery and shall within fourteen (14) days of delivery (time being of the essence) notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Seller has agreed in writing that the Customer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods.

10. Returns

10.1 Returns will only be accepted provided that:

(a) the Customer has complied with the provisions of clause 9.1; and

(b) the Seller has agreed in writing to accept the return of the Goods; and

(c) the Goods are returned at the Customer's cost within thirty (30) days of the delivery date; and

(d) the Seller will not be liable for Goods which have not been stored or used in a proper manner; and

(e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.

10.2 The Seller may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of 15% of the value of the returned Goods plus any freight.

11. Consumer Guarantees Act 1993

11.1 If the Customer is acquiring Goods 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 Goods by the Seller to the Customer.

12. Intellectual Property

12.1 All intellectual property rights relating to the MYOB software and any other Goods are the sole property of the Seller and these terms and conditions or any agreement they form part of shall not convey title or grant any right of ownership in the intellectual property to the Customer, and such intellectual property shall only be used by the Customer at the Seller's discretion.

13. Default and Consequences Of Default

13.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgement.

13.2 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in pursuing the debt including legal costs on a solicitor and own client basis and the Seller's collection agency costs.

13.3 Without prejudice to any other remedies the Seller may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Customer for any loss or damage the Customer suffers because the Seller has exercised its rights under this clause.

13.4 If any account remains overdue after thirty (30) days then an amount of the greater of $20.00 or 10.00% of the amount overdue (up to a maximum of $200) shall be levied for administration fees which sum shall become immediately due and payable.

13.5 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable in the event that:

(a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Customer will be unable to meet its payments as they fall due; or

(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 Customer.

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

14. Security And Charge

14.1 Despite anything to the contrary contained herein or any other rights which the Seller may have howsoever:

(a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.

(b) should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.

(c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 14.1.

15. Cancellation

15.1 The Seller may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice the Seller shall repay to the Customer any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.

15.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by the Seller (including, but not limited to, any loss of profits) up to the time of cancellation.

15.3 Where the Customer has entered into an agreement for the Seller to supply support Services, on cancellation the Customer shall remain liable for all fees due for the remainder of the period of the support agreement.

15.4 The Customer must pay the applicable cancellation fee for cancellation or postponements of training or consulting services the Customer has ordered:

(a) 14 days prior to provision of the service – 50% of the fees payable for the service;

(b) 7 days prior to provision of the service – 75% of the fees payable for the service; and

(c) less than 7 days prior to provision of the service – 100% of the fees payable for the service.

16. Privacy Act 1993

16.1 The Customer and the Guarantor/s (if separate to the Customer) authorises the Seller to:

(a) collect, retain and use any information about the Customer, for the purpose of assessing the Customer's creditworthiness or marketing products and services to the Customer; and

(b) disclose information about the Customer, whether collected by the Seller from the Customer directly or obtained by the Seller from any 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.

16.2 Where the Customer and/or Guarantors are an individual the authorities under clause 16.1 are authorities or consents for the purposes of the Privacy Act 1993.

16.3 The Customer and/or Guarantors shall have the right to request the Seller for a copy of the information about the Customer and/or Guarantors retained by the Seller and the right to request the Seller to correct any incorrect information about the Customer and/or Guarantors held by the Seller.

17. Limitation of Liability

17.1 In the event of any breach of this contract by the Seller the remedies of the Client shall be limited to damages. The Client agrees that the damages shall be limited to an amount equal to the Price under any agreement that these terms and conditions form part of.

17.2 Neither the Seller nor its employees shall be liable in contract, tort or otherwise whatsoever to the Client for any loss of profit, loss of use or interruption of business, or for any indirect loss and/or expense, or special, incidental or consequential damages of any kind whether under these terms and conditions or otherwise.

18. Direct Debits From Bank Accounts And Credit Cards

Direct Debit transactions from Bank Accounts and Credit Accounts to be made in respect of Goods or Services supplied by the Seller pursuant to this agreement shall be governed by the attached Paperless Direct Debit Authority and Credit Card Direct Debit Terms and Conditions.

19. General

19.1 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.

19.2 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 courts of New Zealand.

19.3 The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by the Seller.

19.4 The Seller reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Customer of such change.

19.5 Neither party shall have the right to assign or otherwise transfer its obligations under these terms and conditions.

19.6 The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if section 15(d) were omitted from the Contractual remedies Act 1979.

19.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.

19.8 The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision.

19.9 These terms and conditions are to be read in conjunction with any agreement that they may form part of. In the event of a conflict between any such agreement and these terms and conditions these terms and conditions will prevail.

Direct Debit From Bank Accounts

Paperless Direct Debit Authority

These terms and conditions are in addition to the terms and conditions of any existing contract\s with MYOB NZ Limited or the terms and conditions associated with the products and services that relate to your paperless direct debit authority.

By selecting the Direct Debit from Bank Account payment method either online or by completing a Direct Debit Authority Form you, the Customer, are authorising MYOB NZ Limited to debit funds from the bank account nominated, all amounts which MYOB NZ Limited (hereafter referred to as the Initiator) initiate by Direct Debit.

The Customer and Initiator acknowledge and accept that the Bank accepts this paperless instruction/authorities only upon the conditions listed below.

CONDITIONS OF INSTRUCTION TO ACCEPT PAPERLESS DIRECT DEBITS

1 **The Initiator:**

(a) Has agreed to send notice of the net amount of each Direct Debit no later than the day the Direct Debit is initiated. This notice will provide either:

(i) in writing; or

(ii) by electronic mail where the Customer has provided prior consent to the Initiator.

The notice will include the following message:- "The amount of $....., will be direct debited to your Bank account on (initiating date)."

(b) May, upon the relationship which gave rise to this instruction being terminated, give notice to the Bank that no further Direct Debits are to be initiated under the instruction. Upon receipt of such notice the Bank may terminate this instruction as to future payments by notice in writing to me/us.

2 **The Customer may:**

(a) At any time, terminate this instruction as to future payments by giving written noticed of termination to the Bank and to the Initiator.

(b) Stop payment of any Direct Debit to be initiated under this instruction by the Initiator by giving written notice to the Bank prior to the Direct Debit being paid by the Bank.

(c) Where a variation to the amount agreed between the Initiator and the Customer from time to time to be direct debited has been made without notice being given in terms of 1(a) above, request the Bank to reverse or alter any such Direct Debit initiated by the Initiator by debiting the amount of the reversal or alternation of the Direct Debit back to the Initiator through the Initiator's Banks, PROVIDED such request is made not more than 120 days from the date when the Direct Debit was debited to my/our account.

(d) Request the Bank to reverse any Direct Debits initiated by the Initiator under the Instructions by debiting the amount of the Direct Debits back to the Initiator through the Initiator's Bank where the Initiator cannot produce a copy of the Instructions and/or Confirmation to me/us that I/we are reasonably satisfied demonstrate that I/we have authorised my/our bank to accept Direct Debits from the Initiator against my/our account PROVIDED the request is made not more than 9 months from the date when the first Direct Debit was debited to my/our account by the Initiator under the Instructions.

3 **The Customer acknowledges that:**

(a) This instruction will remain in full force and effect in respect of all Direct Debits passed to my/our account in good faith notwithstanding my/our death, bankruptcy or other revocation of this instruction until actual notice of such event is received by the Bank.

(b) In any event this instruction is subject to any arrangement now or hereafter existing between me/us and the Bank in relation to me/our account.

(c) Any dispute as to the correctness or validity of any amount debited to my/our account shall not be the concern of the Bank except in so far as the Direct Debit has not been paid in accordance with this instruction. Any other disputes lie between me/us and the Initiator.

(d) Where the Bank has used reasonable care and skill in acting in accordance with this authority, the Bank accepts no responsibility or liability in respect of:

- the accuracy of information about Direct Debits on Bank statements
- any variations between notices given by the Initiator and the amounts of the Direct Debits.

(e) The Bank is not responsible for, or under any liability in respect of the Initiator's failure to given written advanced noticed correctly nor for the non-receipt or late receipt by me/us for any reason whatsoever. In any such situation the dispute lies between me/us and the Initiator.

(f) Notice given by the Initiator in terms of clause 1(a) to the debtor responsible for the payment shall be effective. Any communication necessary because the debtor responsible for payment is a person other than me/us is a matter between me/us and the debtor concerned.

4 **The Bank may:**

(a) In its absolute discretion conclusively determine the order of priority payment by it of any monies pursuant to this or any other instruction, cheque or draft properly executed by me/us and given to or drawn on the Bank.

(b) At any time terminate this instruction as to future payments by notice in writing to me/us.

(c) Charge its current fees for this service in force from time to time.

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Direct Debit From Credit Cards

Online Credit Card Direct Debit Terms and Conditions

The following terms and conditions relate to your Credit Card direct debit authority and sets out your rights, our commitment to you, your responsibilities to us and where you should go for assistance. These terms and conditions are in addition to the terms and conditions of any existing contract\s with MYOB NZ Limited or the terms and conditions associated with the products and services that relate to your direct debit authority.

1 By selecting the Direct Debit from Credit Card payment method either online or by completing a Direct Debit Authority Form you:

- Acknowledge that you are authorised to establish this direct debit authority.
- Understand and accept your commitments and responsibilities under the credit card direct debit terms and conditions set out below.
- Authorise MYOB NZ Limited to charge your nominated Credit Card for both Periodic Payments for all contracts and/or products and services with recurring charges; and One Off Payments where Credit Card has been selected as the payment method.

2 MYOB NZ Limited will arrange for funds to be debited from your nominated Credit Card, as authorised by you, on the direct debit date shown on your invoices.

3 A tax invoice confirming the amount of the payment will be issued to you within 1-3 working days of:

- Periodic Payments - the start of a month in which a payment will be made by you.
- One Off Payments – your order being accepted and processed.

4 MYOB will advise of any changes to the direct debit arrangements at least 14 days in advance.

5 It is your responsibility to ensure that you have sufficient funds available to cover your payments and that your Credit Card details are correct.

6 In the event that a payment is declined we will make up to two (2) further attempts to process the payment, 3 days after the first or subsequent attempt.

7 Should a payment default MYOB will notify you by email and, it is your responsibility to organise an alternative payment which should be received by MYOB within five (5) working days of the original due date.

8 Should a response not be received within the 5 working days allowed, MYOB NZ Limited may list your payment default with Veda Advantage (CRAA). Defaults are listed for a period of five (5) years and may have an adverse effect on your credit rating.

9 MYOB may suspend your account, subscription or membership until any outstanding payments have been made.

10 You may incur fees or charges imposed by MYOB to cover administration fees for the collection of any defaulting payment under this agreement.

11 If you believe that there has been an error in debiting your Credit Card you should immediately contact the MYOB Accounts Department by phone on 03 983 2660 or via email at accounts@myob.com so that we can resolve your query promptly.

12 If MYOB concludes, as a result of our investigations, that your Credit Card has been incorrectly debited, MYOB will advise you and arrange a refund of the amount due to you. If MYOB concludes that your Credit Card has been debited correctly, we will advise you and provide evidence of our finding.

13 If you wish to defer or alter any payment arrangements, stop an individual payment item or cancel a payment authority please contact the MYOB Accounts Department by phone on 03 983 2660 or via email at accounts@myob.com.

14 Confidentiality - all information provided to MYOB is confidential and protected by the MYOB privacy policy. The policy can be viewed at http://www.myob.co.nz/privacy. However, you acknowledge and agree that we will need to provide information to our financial institution to initiate or alter payment arrangements from your Credit Card or to investigate an alleged incorrect or wrongful payment.

15 This Authority permits MYOB to change the amount debited from your Credit Card, with at least 14 days notice, to reflect any change to prices for the products and/or services that relate to your direct debit authority. It also permits MYOB to change the amount debited or charged to cover any increases in amounts payable arising from the purchase of additional products by you from time to time, with at least 14 days notice.

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