

SALE OF PRODUCT TERMS

SECTION A: APPLICATION OF TERMS

- 1.1 These Terms apply to any order for, or purchase of, Products from Boxfish Research Limited (Boxfish). By ordering or purchasing Products from Boxfish Research:
 - a. you (the Client) agree to these Terms; and
 - b. where you order or purchase Products on behalf of, another person (e.g. a company), you confirm that you are authorised to, and do in fact, agree to these Terms on that person's behalf and that, by agreeing to these Terms on that person's behalf, that person is bound by these Terms.
- 1.2. If you do not agree to these Terms, you are not authorised to order, purchase (or attempt to order or purchase) Products from Boxfish, and you must immediately stop doing so.

SECTION B: GENERAL TERMS

1 INTERPRETATION

- 1.1 **Definitions:** In the Terms, the following terms have the stated meaning:

Confidential Information: the provisions of the Terms and any information that is not public knowledge and which is obtained from the other party in the course of, or in connection with, the Terms.

Documentation: the user and technical documentation for the Product available on the Website (specifically at www.boxfish.nz/downloads) or otherwise provided by Boxfish and includes information on product maintenance, servicing, and appropriate use. The Documentation may be updated from time to time, the client should check the Website to ensure that they are using the most recent Documentation for the Product.

Force Majeure: an event that is beyond the reasonable control of Boxfish, excluding an event to the extent that it could have been avoided by a party taking reasonable steps or

reasonable care.

Products: means products manufactured by Boxfish or any Related Company of Boxfish and available for supply to the Client, as set out in the Quote, or the products set out in an order and accepted by Boxfish under clause 2.2 (as the context requires).

Incoterms: the most recent Incoterms of the International Chamber of Commerce as they are at the time the agreement is entered into.

Intellectual Property Rights: includes copyright and all worldwide rights conferred under statute, common law or equity relating to inventions (including patents), registered or unregistered trademarks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity.

Loss: includes loss of profits, savings, revenue or data, and any other claim, damage, loss, liability and cost, including legal costs on a solicitor and own client basis.

Payment Terms: the payment terms set out in the Quote.

Price: the price for the Products set out in the Quote, as updated by Boxfish in accordance with clause 4.4.

Quote: the quote which indicates shipping incoterms, Products, prices, specifications and *Valid Until* date.

Related Company: has the meaning given in the Companies Act 1993.

Sales Tax: sales tax, goods and services tax, value added tax or equivalent tax payable under any applicable law.

Shipping Date: the date that Boxfish provides written confirmation to the Client that the Products will be or have been shipped.

Start Date: the date on which Boxfish confirms an order placed by the Client.

Terms: Section A, Section B (General Terms) and the Quote.

Valid Until: means the date through which the Prices remain valid.

Website: means the domain www.boxfish.nz.

Year: a 12-month period from the Start Date or the anniversary of that date.

1.2 **Interpretation:** In the Terms:

- a clause and other headings are for ease of reference only and do not affect the interpretation of the Terms;
- b words importing the singular include the plural and vice versa; and
- c a reference to:
 - i a **party** to the Terms includes that party's permitted assigns;
 - ii **including** and similar words do not imply any limit;
 - iii all currencies listed in the Terms are **USD**; and

- iv a statute includes references to regulations, orders or notices made under or in connection with the statute or regulations and all amendments, replacements or other changes to any of them;

- d no term of the Terms is to be read against a party because the term was first proposed or drafted by that party; and
- e except for any special condition listed in Section A (which prevails over any other clause of the Terms), if there is any conflict between Section B and Section A of the Terms, Section B prevails unless expressly stated otherwise in Section A.

2 **ORDERS**

- 2.1 **Orders:** The Client may place orders for Products by sending a purchase order to a sales representative at Boxfish Research, from time to time.
- 2.2 **Acceptance of orders:** An order for Products is accepted when Boxfish sends notice of confirmation of that order to the Client's email address listed by the Client when placing an order or notified under clause 11.6.
- 2.3 **No Client terms:** No Client terms are incorporated into the Terms or apply to any order or Products, whether set out in an order or otherwise.
- 2.4 **Rejection of orders:** Boxfish may reject an order for Products for any reason.
- 2.5 **Cancellation:** An order for Products, once accepted by Boxfish, cannot be varied or cancelled except with the written agreement of both parties.
- 2.6 **Non-exclusive:** Boxfish's supply of Products to the Client is non-exclusive. Nothing in the

Terms prevents Boxfish from supplying Products to any other person.

3 DELIVERY, RISK AND TITLE

3.1 **Delivery, Duties, Insurance and Taxes:**

Boxfish must deliver the Products in accordance with the Incoterms shown in the Quote. The Incoterms applicable at the time the agreement is entered into will lead to the interpretation of the transportation and delivery terms used in offers, purchase agreements and/or purchase confirmations, storage agreements and/or storage confirmations, insofar as these are not deviated from in the Terms or Quote.

3.2 **Failure to take delivery:** If the Client is unable to take delivery for any reason, Boxfish may store the Products for later redelivery. The Client indemnifies Boxfish against all Loss (including costs of storage and other logistical costs), suffered or incurred (or reasonably charged) by Boxfish as a direct or indirect result of any failure by the Client to take delivery.

3.3 **Alternative delivery:** If you request that the Products be delivered to another person, or if a person other than you takes possession of the Products at your requested delivery address, that person takes possession of the Products as your agent and you remain fully liable to Boxfish under these Terms despite delivery to that other person.

3.4 **Delay:** Boxfish will use reasonable efforts to deliver the Products on or before the estimated Delivery date (if any) set out in Boxfish's confirmation of order notice, but:

- a Boxfish will not be liable for any loss, liability or damage resulting from any delay; and
- b the Client will not be relieved of any obligation to accept or pay for the

Products by reason of that delay.

3.5 **Title:** Title to Products passes to the Client on the later of:

- a delivery; and
- b receipt in full by Boxfish of payment for the Products.

3.6 **Restriction:** Except to the extent expressly permitted by applicable law, the Client must not reverse engineer, copy, decompile, disassemble, or otherwise attempt to access or derive source code or other intellectual property from the Products or any componentry.

3.7 **Risk:** Risk in the Products passes to the Client on delivery.

4 PRICE AND PAYMENT

4.1 **Price and costs:** The Client must pay:

- a the Price for the Products; and
- b any freight, handling and other delivery charges.

4.2 **Invoicing and payment:**

- a Boxfish will provide the Client with valid Sales Tax invoices for the amounts payable under clause 4.1.
- b Unless agreed otherwise, the Prices exclude Sales Tax, which the Client must pay on taxable supplies under the Terms.
- c The Client must pay the Prices:
 - i on the dates set out in the Payment Terms, or if there are none, by the 20th of the month following invoice; and
 - ii electronically in cleared funds without any set off or deduction except to the extent required by law. If the Client is required by law to

make any deduction, the Client must pay Boxfish any additional amount that is necessary to ensure receipt by Boxfish of the full amount which Boxfish would have received but for the deduction.

4.3 **Overdue amounts:** Boxfish may charge interest on overdue amounts. Interest will be calculated from the due date to the date of payment (both inclusive) at an annual percentage rate equal to the corporate overdraft reference rate (monthly charging cycle) applied by Boxfish's primary trading bank as at the due date (or if Boxfish's primary trading bank ceases to quote such a rate, then the rate which in the opinion of the bank is equivalent to that rate in respect of similar overdraft accommodation expressed as a percentage) plus 2% per annum.

4.4 **Adjustment to Prices:** Boxfish may increase the Prices by providing written notice to the Client, provided that the new Prices will apply only to orders for Products placed after receipt of the notice. The Prices are no longer valid after the Valid Until date on the Quote. If there is no Valid Until date, then the Prices are no longer valid 30 days after the Quote was sent.

5 WARRANTIES

5.1 **Mutual warranties:** Each party warrants that it has full power and authority to enter into and perform its obligations under the Terms which, when signed, will constitute binding obligations on the warranting party.

5.2 **Title:** Boxfish warrants that, at the time that title passes to the Client:

- a it has the right to sell the Products; and
- b the Products are sold free from any third party charge or encumbrance not made known to the Client.

5.3 **Products:** Unless agreed otherwise in writing, Boxfish warrants that the Products will be new and unused and, for a period of 24 months from delivery, will:

- a materially comply with the applicable Documentation; and
- b be free from material defects in material, workmanship and design.

5.4 **Warranty exclusions:** The warranties in 5.3 do not apply to any Product:

- a from which the serial number has been removed or defaced;
- b where the seals have been broken, tampered with or installed incorrectly (other than by Boxfish);
- c that has become defective as a result of:
 - i. accident, misuse, abuse, damage cause by sand, dirt, impact or other external causes;
 - ii. defects arising from normal wear and tear;
 - iii. corrosion due to exposure to sea water or chemicals;
 - iv. damage due to fluctuations in supply voltages, lighting, or from large static discharges;
 - v. damage caused by water or liquid ingress;
 - vi. failure to follow the usage instructions for the Product in the Documentation (including by being operated outside the usage parameters stated in the Documentation);
 - vii. failure to follow the servicing guidelines for the Product in the Documentation;
 - viii. use with parts not manufactured, approved, or sold by Boxfish; or

ix. modification or service by anyone other than Boxfish or our authorised service agents; or by written agreement.

d The warranties in clause 5.3 do not cover batteries, tether or equipment or accessories not manufactured by Boxfish.

5.5 **Breach of warranty:**

a Subject to clause 5.5b, if the Products do not meet any warranty under clause 5.3, Boxfish will (at its option and cost):

i repair or replace (which may be with a reconditioned Product of like condition); or

ii refund or offer to you a reduction in the Price that you have paid for the Product.

b Any repair, replacement, or refund under clause 5.5a is conditional upon the Client notifying Boxfish of any issues or defects, promptly returning the Products to the Boxfish maintenance centre and complying with any other reasonable instructions of Boxfish with respect to the Product's return.

c The cost of insuring and returning the Products to the Boxfish maintenance centre is the Client's responsibility. Boxfish will be responsible for insuring and returning the Products to the client's original shipping address. If the address differs Boxfish may charge of fee if insurance and shipping costs would be greater.

d Boxfish's obligation under clause 5.5a is the Client's sole remedy against Boxfish for breach of warranty.

5.6 **Further exclusions:**

a The warranties in clause 5.3 do not apply to any defect caused by Force Majeure; the Client's failure to follow applicable use or operations instructions in the Documentation; the Client's failure to service the Products as set out in the Documentation; accident; unusual physical, electrical or electromagnetic stress (including power surges); neglect; maintenance or modification by any person other than Boxfish; or any other misuse, abuse or mishandling.

b To the maximum extent permitted by law, Boxfish's warranties are limited to those stated in clauses 5.1 to 5.3. Any other condition or warranty (including any warranty under the New Zealand Contracts and Commercial Law Act 2017) is excluded.

c The Client agrees and represents that it is acquiring the Products for the purposes of a business and that the New Zealand Consumer Guarantees Act 1993 does not apply to the supply of the Products or the Terms.

6 **INTELLECTUAL PROPERTY**

6.1 **Ownership:** Boxfish (and its licensors) owns all Intellectual Property Rights in the Products and the Documentation.

6.2 **No assignment:** Nothing in the Terms acts as an assignment of any Intellectual Property Rights in the Products.

7 **CONFIDENTIALITY**

7.1 **Security:** Each party agrees that, unless it has the prior written consent of the other party, it will:

a keep confidential at all times the Confidential Information of the other party; and

- b ensure that any personnel or professional advisor to whom a party discloses other party's Confidential Information are aware of, and comply with, the provisions of this clause 7.1a.

7.2 **Disclosure required:** The obligations of confidentiality in clause 7.1a do not apply to any disclosure:

- a for the purpose of performing the Terms or exercising a party's rights under the Terms;
- b to the extent required by law (including under the rules of any stock exchange);
- c of Confidential Information which:
 - i is publicly available through no fault of the recipient of the Confidential Information or its personnel; or
 - ii was rightfully received from a third party without restriction or without breach of the Terms; or
- d by Boxfish if required as part of a *bona fide* sale of its business (assets or shares, whether in whole or in part) to a third party, provided that Boxfish enters into a confidentiality agreement with the third party on terms no less restrictive than this clause 9.

7.3 **Return of information:** Except to the extent that a party has ongoing rights to use Confidential Information, a party must, at the request of the other party following the termination of the Terms, promptly return to the other party or destroy all Confidential Information of the other party in the recipient party's possession or control.

8 LIABILITY

8.1 **Maximum liability:**

- a To the maximum extent permitted by law:

- i. except as set out in clause 5, the Client purchases and uses the Products at its own risk; and
- ii. Boxfish is not liable or responsible to the Client or any other person for Loss in connection with the Products, the Client's use of the Products, or these Terms. This exclusion applies regardless of whether Boxfish's liability or responsibility arises in contract or (including negligence) equity, breach of statutory duty, or otherwise; and

- b only to the extent 8.1a and 8.1i do not apply or do not limit or exclude Boxfish's liability, Boxfish's total liability to the Client in connection to claims relating to a Product or these Terms must not exceed the purchase price paid by the Client for that Products.

8.2 **Unrecoverable loss:** Boxfish is not liable to the Client for any:

- a loss of profit, revenue, savings, business, use, data, and/or goodwill; or
- b consequential, indirect, incidental or special damage or loss of any kind.

8.3 **Unlimited liability:** Clauses 8.1 and 8.2 do not apply to limit Boxfish's liability for:

- a fraud or wilful misconduct; or
- b breach of clause 7.

8.4 **Mitigation:** Each party must take reasonable steps to mitigate any loss or damage, cost or expense it may suffer or incur arising out of anything done or not done by the other party under or in connection with the Terms.

9 TERMINATION AND SUSPENSION

9.1 **Termination rights:** Either party may terminate these Terms on no less than 30

day's prior written notice.

9.2 Consequences of termination:

- a Termination of the Terms does not affect each party's rights and obligations accrued before the termination or y date.
- b The Terms continue to apply to any order accepted before the termination date.

9.3 Obligations continuing: Clauses which, by their nature are intended to survive expiry or termination, including clauses 4, 5, 6, 7, 8, 9, 10, and 11, continue in force.

9.4 Remedies for non-payment: Where the Client has failed to pay any amount due under the Terms, Boxfish may, in addition to any other remedy it has under the Terms or at law:

- a refuse to deliver and/or allow collection of any Products, and sell, use, dismantle or dispose of that Products to offset the amount payable; and/or
- b suspend the supply of any Products.

10 DISPUTES

10.1 Good faith negotiations: Before taking any court action, a party must use its best efforts to resolve any dispute under, or in connection with, the Terms through good faith negotiations.

10.2 Obligations continue: Each party must, to the extent possible, continue to perform its obligations under the Terms even if there is a dispute.

10.3 Right to seek relief: This clause 10 does not affect either party's right to seek urgent interlocutory and/or injunctive relief.

11 GENERAL PROVISIONS

11.1 Force Majeure: Boxfish is not liable to the Client for any failure to perform its obligations under the Terms to the extent caused by

Force Majeure, provided that Boxfish:

- a immediately notifies the Client and provides full information about the Force Majeure;
- b uses reasonable efforts to overcome the Force Majeure; and
- c continues to perform its obligations as far as practicable.

11.2 Transfer: On written notice, Boxfish may assign any or all of its rights and obligations under or transfer any or all of its interest in this Agreement to a Related Company of Boxfish.

11.3 Rights of third parties: No person other than Boxfish and the Client has a right to a benefit under, or to enforce, the Terms.

11.4 Waiver: To waive a right under the Terms, that waiver must be in writing and signed by the waiving party.

11.5 Independent contractor: Boxfish is an independent contractor of the Client. No other relationship (e.g. joint venture, agency, trust or partnership) exists under the Terms.

11.6 Notices: A notice given by a party under the Terms must be delivered via email to an email address notified by the other party for this purpose. If the notice is notice of termination, a copy of that email must be immediately delivered (by hand or courier) to the Chief Executive of the other party.

11.7 Severability: Any illegality, unenforceability or invalidity of a provision of the Terms does not affect the legality, enforceability or validity of the remaining provisions of the Terms.

11.8 Variation: Unless stated otherwise in the Terms, any variation to the Terms must be in writing and signed by both parties.

11.9 Entire Agreement: The Terms sets out

everything agreed by the parties relating to the supply of the Products and supersedes and cancels anything discussed, exchanged or agreed prior to the Start Date. The parties have not relied on any representation, warranty or agreement relating to the subject matter of the Terms that is not expressly set out in the Terms, and no such representation, warranty or agreement has any effect from the Term's start. Without limiting the previous sentence, the parties agree that sections 9, 12A, and 13 of the New Zealand Fair Trading Act 1986 do not apply.

11.10 **Law:** The Terms is governed by, and must be interpreted in accordance with, the laws of New Zealand. Each party submits to the non-exclusive jurisdiction of the courts of New Zealand in relation to any dispute connected with the Terms.

11.11 **Counterparts:** The Terms may be signed in counterparts, each of which constitutes an original and all of which constitute the same agreement. A party may enter the Terms by signing and emailing a counterpart copy to the other party.