



Cloudkept Solutions

...because there's always an easier way

Working together



1. Definitions

- 1.1 In these Conditions, unless the context requires otherwise:
- (a) Client means the person who engages CKS to provide the Services or Ad Hoc Requests;
 - (b) Conditions means these terms and conditions of sale and any special terms and conditions set out in writing by CKS in its Proposal;
 - (c) CKS means CloudKept Solutions Limited and includes its subsidiaries, related companies, employee and contractors;
 - (d) Licensed Software means the cloud based software provided by CKS as part of its Services, which includes but may not be limited to Xero, WorkflowMax, Cin7, Flexitime etc;
 - (e) Monthly Fee means the monthly fee payable by the Client for the Services set out in the Proposal including GST;
 - (f) Price means the total amount invoiced by CKS in the current calendar year;
 - (g) Proposal means either an email or a proposal document prepared by CKS and agreed by the Client outlining the scope of Services to be provided by CKS;
 - (h) Services means the monthly Services which CKS supplies to the Client as set out in its Proposal;
 - (i) Ad Hoc Request means a request to carry out work which does not fall within the scope of work set out in a Proposal.

2. Conditions Applicable

- 2.1 These Conditions shall apply to all Proposals and Ad Hoc Requests, to the exclusion of all other terms and conditions, including any terms and conditions which the Client may purport to apply under any purchase order, confirmation of order or similar document.
- 2.2 All Proposals and Ad Hoc Requests shall be deemed to be an offer by the Client to engage CKS pursuant to these Conditions.
- 2.3 The commencement of work by CKS pursuant to a Proposal or Ad Hoc Request shall be conclusive evidence of the Client's acceptance of these Conditions.
- 2.4 Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by CKS.

3. Services and Ad Hoc Requests

- 3.1 The Services which CKS agrees to provide are set out in the Proposal.
- 3.2 In addition to the Fixed Fee Services which CKS agrees to provide as part of a Proposal the Client may also request CKS to carry out extra Ad Hoc Requests. The Client shall use its best endeavours to ensure that any Ad Hoc Requests are sufficiently detailed and specific to allow CKS to complete such Ad Hoc Requests to the satisfaction of the Client.
- 3.3 Additional charges will be levied for Ad Hoc Requests on an hourly rate basis as agreed with the client.
- 3.4 CKS may complete tasks at various stages of providing the Services and it shall be the Client Representative's responsibility to carefully check such tasks have been completed to the satisfaction of the Client and notify CKS if not.

- 3.5 CKS shall not be liable or responsible for carrying out any Ad Hoc Requests unless they are set out in writing by the Client Representative. However, solely for the purposes of billing, any non-written Ad Hoc Requests will be invoiced and charged for to the extent they are carried out by CKS.
- 3.6 In the event that the Client gives CKS instructions in relation to carrying out the Services which are incorrect or have to be corrected at a later date by CKS, such corrections will be treated as a Ad Hoc Request and charged separately to the Monthly Fee.

4. Nature of Advice

- 4.1 CKS does not provide accounting or financial advice and anything said by CKS shall not be relied upon as constituting financial or accounting advice.
- 4.2 The Client is wholly responsible for the information contained in the financial statements which CKS compiles based upon the information provided to it which has not been subject to an audit or review engagement. Neither CKS nor any of its employees or contractors accept liability for the reliability, accuracy or completeness of the compiled information, nor does CKS accept any liability of any kind (whether direct, indirect or consequential) and including liability for negligence, to any person for losses incurred as a result of placing reliance on the compiled information.

5. Licensed software

- 5.1 CKS is a reseller or provider of the Licensed Software and the Client acknowledges that CKS has no control over the integrity or stability of that Licensed Software and the use of the Licensed Software by the Client is at its sole risk. CKS excludes all liability whatsoever (including direct, indirect or consequential loss) arising from (without limitation):
- (a) Any failure or downtime suffered by the Licensed Software;
 - (b) Any loss of data stored within the Licensed Software;
 - (c) Any harm which the Licensed Software may cause to the Client's IT infrastructure.

6. Confidentiality

- 6.1 Incidental to this agreement both parties may each be exposed to confidential information belonging to the other party. The parties both agree that we will keep such information confidential and shall only use that information for the purposes of complying with our respective obligations under this agreement.
- 6.2 The Client gives permission for CKS to discuss the Client's confidential financial information with the Client's accountant solely for the purposes of performing the Services or Ad Hoc Requests. CKS shall not be liable for any accounting charges incurred by the Client arising from CKS's discussions with the Client's accountant.

7. Price and payment

- 7.1 The Monthly Fee for Services shall be as stated in the Proposal. CKS may adjust the Monthly Fee upon giving one month's notice in writing to the Client.
- 7.2 From time to time CKS may provide an estimate for Ad Hoc Requests. Where an estimate is provided it shall be regarded as an estimate only based upon the number of hours CKS anticipates the job will take based on the instructions given by the Client. CKS reserves the right to charge the Client a sum in excess of the estimate where the job takes longer than estimated.



- 7.3** Payment of the Monthly Fee shall be due on the first day of each month in advance.
- 7.4** Payment for Ad Hoc Requests shall be made within 7 days of CKS's invoice.
- 7.5** Time for payment shall be of the essence.
- 7.6** The Monthly Fee and and extra Ad Hoc Requests must be paid by direct payment to CKS's bank account.
- 7.7** Unless an invoice contains a manifest error, all invoices are deemed accepted by the Client 5 days after delivery to the Client.
- 7.8** The Client may not withhold payment of any invoice or other amount by reason of any right of set off or counterclaim which the Client may have, or allege to have, or for any reason whatever.

8. Time for performance

- 8.1** Except where clause 8.2 applies, whilst CKS will use its reasonable endeavours to ensure completion of any Services by the dates stated in the Proposal, having regard to the availability of personnel, supplies, facilities and commitments to other clients, any dates quoted for the commencement or completion of a Service are estimates only and time shall not be of the essence.
- 8.2** Where CKS is responsible for the late filing of any GST return with the IRD which incurs a late filing fee, CKS agrees to pay such fee to the IRD on behalf of the Client. Otherwise CKS shall not be liable to the Client for the late completion of any Service or Ad Hoc Request or any interest or fees charged to the Client by the IRD.
- 8.3** CKS may sub contract any part of the supply of Services.

9. Termination

- 9.1** Either party may terminate this agreement by giving one month's notice.
- 9.2** Where the Client breaches these Conditions and such breach is capable of remedy, CKS may terminate all agreements with the Client where the Client has been given reasonable notice of the breach and it has not been remedied within the time stipulated. Where the breach is incapable of remedy CKS may terminate the agreement immediately by giving written notice.
- 9.3** Where:
- (a) the Client fails to make payment of the Monthly Fee or any amount outstanding to CKS; or
 - (b) commits any other breach of these Conditions;
 - (c) any distress or execution shall be levied upon any of the Client's property;
 - (d) the Client offers to make any arrangement with its creditors;
 - (e) any bankruptcy petition is presented against the Client;
 - (f) the Client is unable to pay its debts as they fall due;
 - (g) if being a Limited Company any resolution or petition to wind up the Client (other than for the purposes of amalgamation or reconstruction without insolvency) is passed or presented;
 - (h) a receiver, administrator, administrative receiver, or manager is appointed over the whole or any part of the Client's business or assets;

- (i) the Client shall suffer any similar proceedings under foreign law;
- then all sums outstanding in respect of any Services or Ad Hoc Requests shall become payable immediately.

- 9.4** In addition, CKS may, in its absolute discretion, and without prejudice to any other rights it may have:
- (a) Suspend access to the Licensed Software; and/or
 - (b) Suspend all future supply of Services or Ad Hoc Requests to the Client; and/or
 - (c) Terminate all Services or Ad Hoc Requests without liability on its part; and/or
 - (d) Charge interest at the rate of 2.5% per month on all sums outstanding;
 - (e) Collect any sums owing, in which case the Client shall be liable for any collection costs incurred on a solicitor / own client basis.
- 9.5** If this agreement is terminated (for whatever reason) CKS agrees to cooperate with the Client regarding the transfer of any subscription in the Licensed Software to a new account holder. If the Client terminates its subscription to Xero, any financial data stored in the Xero software will be held for 7 years but Xero may charge the Client to access it.

10. Warranties

- 10.1** It is agreed that the Services or Ad Hoc Requests are acquired for a business purpose and that the Consumer Guarantees Act 1993 does not apply.
- 10.2** Defective Services or Ad Hoc Requests, or Services which do not comply with the Proposal may, at CKS's discretion, be rectified at CKS's cost.
- 10.3** Any right which the Client may have to reject non-confirming or defective Services will only be effective if:
- (a) The Client notifies CKS in writing within 30 days following completion of a defective task or Ad Hoc Request.
 - (b) The Client is not in default in relation to any amount owing.
- 10.4** CKS accepts no liability for any claim by the Client, or any other person including, without limitation, any claim relating to or arising from any representation, warranties, conditions or agreements made by any agent or representative which are not expressly confirmed by CKS in writing, or any services forming part of the supply of the Services which have been performed by any third party, and the Client agrees to indemnify CKS against any such claim.
- 10.5** Nothing in these terms is intended to have the affect of contracting out of the provisions of the Consumer Guarantees Act 1993, except to the extent permitted by that Act and these terms are to be modified to the extent necessary to give effect to that intention.

11. Exclusion of Liability

- 11.1** CKS shall be under no liability whatever to the Client for any indirect or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by CKS of these Conditions.
- 11.2** In the event of any breach of these Conditions by CKS, the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of CKS exceed the Price.



11.3 The Client shall indemnify CKS for all loss or damage arising by reason of the negligence of the Client, its employees or contractors, or any breach by the Client of these Conditions.

11.4 CKS accepts no liability for any claim by a third party who may have relied on the accounts, relating to or arising from any work done by CKS, any representation, warranties, conditions or agreements made by CKS, or arising from any services which have been performed by CKS, and the Client agrees to indemnify CKS against any such claim.

12. Force majeure

12.1 Neither party shall be liable for any default due to any act of God or civil disturbance, malicious damage, strike, lock-out, industrial action, fire, flood, drought, extreme weather conditions compliant with any law or governmental order, rule, regulation, direction or any other circumstance beyond the reasonable control of either party.

12.2 Each party shall give notice forthwith to the other upon becoming aware of a force majeure event, the notice to specify details of the circumstances giving rise to the force majeure event.

13. Notices

13.1 Any notice under, or in connection with these Conditions, shall be in writing and shall be served by post, email or by hand on a party, sent by guaranteed delivery or email at or to the trading address of the party last known.

13.2 In the absence of evidence of earlier receipt, any notice shall be deemed to be duly served;

- (a) If delivered personally when left at the address;
- (b) If by guaranteed delivery three days after posting; and
- (c) If sent by email, when received.

14. Privacy

14.1 CKS may request and collect personal and/or confidential information about the Client to evaluate whether to agree to provide Services for the Client. The failure to provide the information requested by CKS may result in a Proposal being declined or a Proposal subsequently being terminated by CKS.

14.2 The Client has rights of access to personal information so collected, subject to the provisions of the Privacy Act 1993.

14.3 The Client agrees that its personal information may be used by CKS to advise the Client of CKS's other services.

14.4 The Client authorises the disclosure of personal and/or confidential information held by any other party to CKS regarding any previous agreements entered into by the Client and/or any information in relation to the financial position of the Client.

14.5 The Client agrees that CKS may release to other parties information regarding any Proposal or Ad Hoc Request in order to enforce these Conditions.

15. Dispute resolution

15.1 If any dispute or difference shall arise between the parties as to the meaning of these Conditions, or any matter or thing arising out of or connected with these Conditions, then the parties shall attempt to settle that difference by negotiation.

15.2 Where negotiation is unsuccessful then the dispute shall be referred to either the Disputes Tribunal/ District Court or mediation with the mediator being agreed by the parties or in the absence of agreement being appointed by AMINZ. The costs of mediation shall be borne equally by the parties.

16. Law of Contract

16.1 This contract shall be governed by the laws of New Zealand and the parties irrevocably accept the jurisdiction of the New Zealand Courts.

17. Acceptance

17.1 The signatures below indicate acceptance of this Terms and Conditions of Business.

For CloudKept Solutions Ltd

Corlika Du Plessis (Director)

Signed

Date

For (Company):

Name (Director)

Signed

Date

