

Sensable Business Terms

1. Application, Acceptance and Amendment

1.1 Application

These terms and conditions (**Business Terms**) apply to the purchase of:

- (a) those hardware and/or accessories supplied by Sensable (**Products**); and
- (b) those services to be provided from time to time by Sensable (**Services**)

from Sensable (**us, we**) to the customer identified in the relevant sales documentation (**you**). We agree to supply the Products and/or Services subject to these Business Terms and the relevant sales documentation, which may include any, or a combination, of a Statement Of Work (SOW), sales quote, sales order, invoice, or purchase order (Sales Documentation). By accepting our Sales Documentation (or if the Sales Documentation is not formally accepted, by receiving any Products and/or Services from us) you agree to these Business Terms. The terms of any purchase order you submit to us do not apply and are expressly excluded, unless otherwise explicitly agreed in writing by both parties.

If there is any inconsistency between these Business Terms and any Sales Documentation, then the terms of the Sales Documentation will take precedence. Specific terms and conditions included and agreed upon in any particular Sales Documentation shall not bind us to include any of these same terms and conditions in future Sales Documentation.

1.2 Subject to change

These Business Terms may be changed by us for new Sales Documentation or renewal periods from time to time. Changes will not affect existing Sales Documentation unless agreed in writing.

It's important that you read all the terms in full because they contain, amongst other things, important warranty disclaimers and limitations of liability, and rights and obligations regarding collection, storage and use of data by us.

2. Term

This Agreement will commence on the date specified in the Sales Documentation, and unless terminated earlier in accordance with its terms, will continue for the period specified in the Sales Documentation after which it will automatically renew for successive periods of the same duration. We will notify you at least 20 Business before renewal. Renewal will take effect unless terminated by either party in writing. (**Term**)

2.1 Commencement of Services

We will begin providing Services to you in accordance with the timeframe set out in the Sales Documentation or, if no timeframe is set out, from the date you are connected to the Services so that you are able to receive the Services.

2.2 Cancellation of Sales Documentation

An order for Products or Services agreed in Sales Documentation cannot be cancelled by you;

- (a) after Products have been delivered to you in accordance with clause 13.1 **-Error! Reference source not found.**, or;
- (b) in the case of non-stock Products, after the start of raw materials supply or commencement of manufacturing, or;
- (c) in the case of Products or Services not manufactured, developed or operated by us, after these have been purchased from third-party suppliers.

3. Our Service Commitment to You

3.1 Services

We will provide the Services to you:

- (a) using all reasonable care and skill;
- (b) in a competent and professional manner;
- (c) in accordance with any applicable service descriptions relating to the Services as may be set out on our Website, although we do not guarantee that the Services will be continuous or fault free; and
- (d) using people who have the necessary qualifications and experience.

3.2 Faults

If you report a fault to us, we will respond in accordance with the relevant Service Description as may be set out on our Website, or otherwise within a reasonable period of time.

3.3 Maintenance

From time to time we may temporarily suspend or restrict a Service so that we can carry out maintenance and development work. This will temporarily interfere with your use of the Services. We will always try to ensure that such suspensions or restrictions take place outside normal business hours.

4. Your Commitment to Us

4.1 Co-operation and access

- (a) You will make sure that all information you give to us is complete and accurate. You must update us when your information changes (for example, if you change premises or your contact details).
- (b) If we provide Services that require installation or maintenance of the Products you will give our representatives safe access to your premises or assets so that we can install, inspect, maintain, replace or remove the Products.
- (c) You will, if we ask you to, obtain any third-party authorisation, licence, consent or acknowledgement that we reasonably require in connection with the provision of the Services.

4.2 Your Equipment

You will follow our reasonable instructions about modifications that you may need to make to your equipment so that you can use the Services, including modifications to avoid any danger or interference your equipment may cause to the Services.

4.3 Use of Services

You will, and will ensure all Users will:

- (a) not use the Services in any way which is unlawful or offensive;
- (b) give us and our third-party suppliers such access to your premises or assets as is reasonably necessary to enable us or our third-party suppliers to fix any fault with the Services or implement any change of technology as provided for in clause 7.3;
- (c) follow instructions, guidelines and our reasonable instructions about the use of the Services or the Products including those contained in the user manual, install guide and datasheet provided to you or made available to you on our Website;
- (d) keep any password, PIN or security code we give you confidential, and update it in accordance with prudent security practices;
- (e) only use the Services for the purposes for which they are provided;
- (f) not attempt to change routing of message data through the Service, in any direction, including to any other network or platform unless agreed by us in writing.
- (g) only use the Services for your own internal business requirements and not sell, rebill or otherwise provide any of the Services to anyone else without our prior written consent.
- (h) notify us as soon as possible if you intend to move from the premises or if you change any of your contact details;
- (i) notify us of any faults in the Services as soon reasonably possibly after you become aware of such faults;
- (j) do not do anything or introduce anything (including any virus) that may harm or disrupt the Services, or any third-party network or equipment that affects the Services,
- (k) not disassemble, reverse engineer, copy, modify or in any other way attempt to discover the design or source code of our Products or Services.
- (l) if you are receiving Services, do not use anyone other than us or our authorised suppliers to carry out repairs, alterations, additions or updates to the Products.

4.4 Third Parties

You acknowledge and agree that:

- (a) we are not responsible for ensuring that the Services are unable to be misused by you or any third party; and
- (b) you are responsible for your misuse of the Services and for any use (or misuse) of the Services by any User or third party, whether authorised by you or not.

You indemnify us for all claims, damages, expenses and costs (including legal fees on a solicitor-own client basis) that we may suffer or incur as a direct or indirect result or in connection with use or operation of the Product by you, a User or any third party under your control.

5. Charges, Invoicing and Payment

5.1 Charges

The Charges for Products and Services are as stated in the relevant Sales Documentation. Where the Sales Documentation indicates a fixed Charge for Services, the Charges will be fixed for the duration of the initial 12-month Term of this Agreement subject to our right to increase Charges annually in line with any increase in the Consumer Price Index as published by Statistics New Zealand. Charges that are not fixed may be varied by us from time to time.

5.2 Responsibility for Charges

You will pay and are responsible for the Charges for the Services and/or Products that we provide in accordance with the Agreement, irrespective of who ultimately uses them.

5.3 GST

All Charges exclude GST unless otherwise indicated.

5.4 Invoices

- (a) In respect of the supply of Products, we will issue an invoice to you for the Charges immediately following the date of the Sales Documentation, and payment is due in full prior to delivery of the Products.
- (b) In respect of the provision of Services, we will invoice you at approximately monthly intervals for the Services we provide to you during the previous month. Fixed charges for Services will normally be invoiced in advance and other charges will normally be invoiced in arrears. Payment for Charges related to Services is due by the 20th of the month following the date of the invoice.
- (c) Subject to clause 6.1, you will pay each invoice by the due date without set-off, counterclaim or deduction.

5.5 Unpaid amounts

If any invoiced amount (other than an amount which is genuinely disputed in accordance with clause 6.1) remains unpaid for more than 5 days after the due date, we may charge you a late payment fee of 2% of the outstanding amount due each month compounding from the due date to the date of actual payment. We may also suspend any performance of Services.

5.6 Part payment

Part payment of your invoice will not amount to a full and final settlement unless we have agreed to this in writing.

5.7 Collection costs

If we have to spend money on collecting overdue amounts from you, then you will reimburse us for those costs.

5.8 Additional charges

If we provide you with additional services such as technical or operational support, we may charge you for these as set out in the relevant Sales Documentation.

5.9 Credit checks

We may pass on your information to credit reporting organisations so that they can run credit checks on our behalf at any time. We may also let those organisations know if you have not paid our Charges. At any time, those organisations may pass on to us information about you that they hold. We will use that information to make decisions about providing or continuing to provide you with Services. Those organisations may keep any information about you that we have passed on to them and use it for the purposes of their businesses, which may include supplying it to other entities that use their services. We may suspend or stop providing Services to you if we receive an unsatisfactory credit check about you.

6. Disputed Invoices

6.1 Notice

If you think there is a mistake in an invoice, you must let us know in writing prior to the due date for payment and, if you do so, you may withhold payment of the disputed part of the amount payable. You must pay any undisputed amount by the due date.

6.2 Response procedure

If we agree that there has been a mistake, we will issue a credit note or adjust your next invoice accordingly as soon as reasonably practicable. If we do not agree that there has been a mistake, you can escalate the matter in accordance with clause 16.

7. Variation of Services

7.1 Right to vary

During the Term we may, without liability to you, vary any or all of the Services provided to you where:

- (a) the variation will have a neutral or positive effect on you; or
- (b) such action is required:
 - (i) to comply with applicable law or regulation;
 - (ii) because of a change imposed by a third-party supplier (including a Network Operator); or

- (iii) due to a change in our operations or services, where such change affects most of the customers who receive the Services which we wish to vary;

and the variation to Services will not result in any change to the Charges payable for the Services.

7.2 Notice

We will give you at least 20 Business Days' notice of any variation to any or all of the Services in to be made pursuant to clause 7.1.

7.3 Technology

Without limiting any of our other rights under this Agreement, we may, from time to time, change the technology or other means by which we provide any of the Services. We are not required to give you notice of any change to the technology which we use to provide any of the Services.

8. Suspension of Services

8.1 Suspension for breach

We may restrict or suspend the provision of Services at any time if you breach the Agreement or if we consider (acting reasonably) that you have breached the Agreement. We will use reasonable endeavours to give you at least 2 Business Days' notice of our intention to suspend; however, it will not always be possible for us to do so.

8.2 Disconnection and reconnection charges

If we suspend the provision of Services to you and you did in fact breach our Agreement, we may require you to pay a temporary disconnection Charge and/or a reconnection Charge (which would be a condition of lifting any such suspension).

8.3 Fair use policies

Where applicable, we may limit or suspend Services to ensure compliance with our suppliers' fair-usage policies, including message transmission limits.

9. Termination

9.1 Mutual termination for cause

Either party may terminate this Agreement and/or any Sales Documentation by written notice to the other party if:

- (a) the other party commits a material breach of this Agreement and either:
 - (i) the breach is not capable of being remedied; or
 - (ii) the breach is capable of being remedied and the defaulting party fails to remedy the breach within 5 Business Days after notice in writing has been given to the defaulting party requiring such breach to be remedied;

- (b) either party
 - (i) (or any of its holding companies) goes into liquidation, bankruptcy, administration or receivership or enters into a compromise with its creditors (or it appears that any of these events is likely to happen);
 - (ii) has a receiver or statutory manager appointed over any or all of its assets; or
 - (iii) is removed from the Companies Register (other than as a result of a solvent amalgamation), is dissolved or dies.

9.2 Sensable's termination rights

In addition to the termination rights in clause 9.1, we may suspend the Services or terminate this Agreement immediately if:

- (a) any agreement with any of our Network Operators expires or is terminated, and we cannot, as a result, continue to provide some or all of the Services;
- (b) we reasonably suspect fraud by you or on your behalf.

10. Consequences of Termination

10.1 Consequences

When this Agreement or an Sales Documentation is terminated:

- (a) you will be disconnected so that you are no longer able to receive the relevant Services;
- (b) clauses 10 to 20 (inclusive together with the other provisions of the Agreement which are required to give effect to those clauses or which naturally survive, will remain in effect;
- (c) you must immediately return to us any information, equipment or any other item which is in your possession and which belongs to us; and
- (d) if full payment for Products has not yet been made by you, we may, with reasonable notice and in compliance with applicable law, enter the property where the Products are located to repossess such Products.

10.2 No prejudice

Termination and the rights set out in this clause 10 are without prejudice to any other rights, remedies or obligations either party may have under this Agreement or at law.

10.3 Automatic termination

Termination of this Agreement will automatically terminate every Sales Documentation in existence at the date of termination.

11. Data and Confidentiality

11.1 Collection and use of data

In order to provide, and as part of, the Services we collect data from the Products purchased by you. This data includes, but is not limited to, information about the location and operational status of the devices, measurement data captured by the various sensors on the devices and data identifying the particular Product. This data does not contain any identifiable Personal Information.

You agree we have the right to retain, use, adapt, aggregate with other data and create derivative data and share this data with third parties (both from the time it is created or collected and after termination) to provide you with the Services, improve the Services, to help you get the best use out of your Products. You agree we also have the right to publish, or sell to third parties, the adapted, aggregated or derivative data. Any aggregated or derivative data will not identify you or your Users. We will not publish or sell personally identifiable data.

11.2 Security of data

You acknowledge that we are unable to exercise control over, and make no representations or warranties concerning, the security or content of data or information passing over any part of the Service, including our Network Operators, or any systems operated by third parties and the internet. We have no responsibility or liability for loss or corruption of data.

11.3 Personal Information

Any Personal Information is about you, your Users or other representatives will be collected, used and disclosed in accordance with the New Zealand Privacy Act 2020 and our Privacy Policy. You must obtain all necessary consents from end-Users for data collection and indemnify us for any breach of privacy obligations by you or your Users.

11.4 User consent

You confirm that your Users and representatives consent to and authorise our collection and use of their Personal Information in accordance with clause 11.1.

11.5 Confidentiality

Any information that has been provided under the Agreement by you or us that is not publicly available, is confidential and will not be disclosed.

12. Intellectual Property Rights

12.1 Our intellectual property

You acknowledge that all intellectual property rights (including, without limitation copyright, trademarks, business names, goodwill, rights in designs, know-how and trade secrets, whether registered or unregistered) relating to the Products and Services (including any improvements or changes to any Product and Service) (**Intellectual Property**) belong to us or to our licensors.

12.2 Licence

To the extent necessary for you to use the Products and Services on the terms of this Agreement, we license you the right to use Intellectual Property in the Products or the Services on a non-exclusive, non-transferable, revocable basis for the Term of this Agreement, for the purposes set out in the Agreement, in accordance with:

- (a) The terms of the Agreement; and
- (b) in respect of any software or third-party services that we provide to you in connection with the Services, any terms upon which the software is ordinarily licensed or which we notify to you.

12.3 **Software**

If we provide you with any software in connection with the provision of the Services, you must not copy, modify or reverse assemble the software.

12.4 **Warranty as to third party infringement**

We warrant to you that use of the Products and Services in accordance with, and as authorised by, this Agreement, will not infringe the intellectual property rights of any third party.

12.5 **No other rights**

Unless expressly stated otherwise, nothing in this Agreement shall be construed as to grant you a license or any other rights to use or ownership in our trademarks, patents or other Intellectual Property rights. You are not permitted to copy, modify or use the trademarks without our prior written consent. You will, and will procure Users will, shall refrain from any action that may obstruct the granting of pending patents or any other intellectual property right in any jurisdiction for which we may have applied.

13. **Products**

13.1 **Delivery of Products**

Unless expressly agreed otherwise in the relevant Sales Documentation, all Products will be supplied on a Delivered At Place (DAP) basis under Incoterms 2020.

We will arrange delivery of the Products to the delivery location stated in the Sales Documentation, which may be within the same country or overseas. Delivery dates are estimates only. We are not responsible for any delay in delivery caused by transport providers, customs clearance, or any circumstance beyond our reasonable control, and you are not entitled to cancel your order or claim compensation due to such delay.

13.2 **Freight, Insurance and Customs**

You are responsible for all freight, carriage, transport, handling, insurance, and customs clearance costs at both the place of departure and the place of delivery, unless we expressly agree otherwise in writing.

If we prepay any such costs on your behalf, including freight, insurance, or customs duties, you must reimburse us in full. We may include these costs as a separate item on the relevant invoice.

13.3 **Risk and Title**

Risk of loss or damage to the Products passes to you when the Products are handed to the carrier for shipment to the delivery location, regardless of whether freight or transport costs are prepaid or recharged to you. Where

Products are procured from third-party suppliers, risk in those Products passes to you when risk transfers to us from the supplier under their supply terms (including EXW Incoterms 2020).

Title to the Products passes to you only upon receipt by us of full payment of all Charges and any other sums payable under this Agreement.

13.4 Insurance and Responsibility

Unless expressly agreed otherwise, the Products are not insured during shipment. You are responsible for arranging and maintaining any insurance you require to cover transport or customs-related risks. If you elect not to arrange insurance, you assume full responsibility for any loss of or damage to the Products occurring after they are handed to the carrier.

13.5 Alternative Delivery Terms

If the parties agree in writing to use a different Incoterm (such as EXW, CIF or DDP), the responsibilities and cost allocations for transport, insurance, risk and customs clearance will be as defined in that Incoterm. Any agreed variation must be recorded in the Sales Documentation.

13.6 Discontinuance of supply and support

We shall be entitled at any time to discontinue the production, sale or distribution of any of our Products, to change the design, structure, functionality or any part of any of our Products and amend the Product or change any aspect of our service, warranty or other policies. We do not guarantee any level of continuing support for any current or discontinued Product including provision of replacement parts, repairs, bug fixes or firmware upgrades. We may discontinue a Product with 90 days' notice. We are not obligated to offer a replacement product but may do so at our discretion.

13.7 Product Warranty

We guarantee that the Products comply with the applicable Datasheet, current at time of sale, for a period of 1 year from the date of delivery (in accordance with clause 13.1), provided they are handled, shipped, stored and used according to the user manual and install guide provided to you, or otherwise with an appropriate level of care. We will be liable only for defects which are proved to have been caused by actions or negligence committed before the Products were delivered to you in accordance with clause 13.1. Where the Products are from a manufacturer with a longer warranty, we will facilitate or assist you to make a claim directly with that manufacturer under its warranty terms. We are not liable for warranty claims made after the expiry of our 1 year warranty period.

13.8 Warranty Claims

Where Products are delivered to you and found to be damaged other than as a result of your misuse or lack of reasonable care:

- (a) you must tell us, in writing, the nature of the damage, and return the damaged Products as soon as reasonably practicable, but no later than 10 Business Days from delivery of the Products;
- (b) you must also provide us with copies of any invoice and delivery documents that accompanied the Products; and

- (c) Any other warranty must be made to us in writing within 20 business days after you or a User learned of the defect, and in any event within 1 year from the date of the invoice.
- (d) Returns for Products supplied by third-party manufacturers must follow the manufacturer's RMA process and acceptance criteria.

13.9 **Accepted claim**

- (a) If we accept your claim under clause 13.8, we may, at our option, and as your sole and exclusive remedy for a breach of a Product warranty:
 - (i) replace the Products;
 - (ii) repair the Products;
 - (iii) refund the relevant Charge; or
 - (iv) provide a credit against the relevant Charge where you are yet to pay.
- (b) The repair or replacement of any defective Product does not mean an extension of the warranty period. If we find the Product is defective upon our examination, we will bear shipping costs incurred in returning the Product to you as well as all costs involved in our examination of the Product. If we find the Product to not be defective upon our examination, you will be liable for shipping costs incurred in returning the Products to you.
- (c) We may request that you return Products that are claimed to be defective, for inspection and/or test by an independent third party acceptable to us. You must return the Products for inspection or test at our request.
- (d) We will have no liability under this warranty or otherwise if, or due to:
 - (i) the Products are used for any purpose other than that intended and in accordance with our user manual provided to you;
 - (ii) you or any third-party attempt to alter, modify or repair the Products or change the programming of the Products or change the configuration of the Products in any way other than in strict accordance with a recommended settings configuration profile provided by us, without express written approval from us;
 - (iii) the damage was caused by installation in a manner contrary to our install guide;
 - (iv) the damage was caused by vandalism, abnormal use or from general wear and tear;
 - (v) the loss or damage was caused by a failure of any accessory, product, software or system not supplied or authorised by us;
 - (vi) improper or inadequate maintenance or configuration contrary to the user guide provided to you;
 - (vii) operation outside of the published environmental specifications for the Products;

- (viii) opening of the external case or replacement of the internal battery by you or any third-party;
 - (ix) faulty performance of the products in which the Products are embedded by you;
 - (x) non-conformities and defects which are proved to have been caused by actions or negligence committed after the Products were delivered to you;
 - (xi) non-performance or faulty performance of the Products as a result of radio-frequency use restrictions or power broadcasting restrictions in any given country;
 - (xii) Products are operated independently of message processing Services provided by us, unless expressly agreed in writing;
 - (xiii) Depletion of the internal batteries, regardless of cause.
 - (xiv) Failure by you or any third-party to implement firmware or software updates issued by us or our suppliers.
 - (xv) Electrostatic discharge
 - (xvi) Water or dust ingress
- (e) We do not warrant the workmanship or materials of any hardware or software developed by third-party suppliers or partners, either integrated in the Products or sold together with the Products as a kit.
- (f) We do not warrant that the operation of Products or Services will be uninterrupted or error free.
- (g) Any third party software we provide is solely to facilitate your operation of the Products and Services and you must check and accept the terms and conditions of use of each software supplier. Any Software adapted or developed by us is offered "as is" without any express or implied warranty. We advise against using this software for medical and health applications and, in general, in any critical system on which human lives or public health may depend.

14. No Additional Terms

14.1 Exclusions

All warranties, terms, guarantees and conditions that are not expressly set out in this Agreement are excluded to the maximum extent permitted by law and we disclaim any implied warranty of merchantability or fitness for a particular purpose.

14.2 New Zealand Fair Trading Act 1986 (FTA) and Consumer Guarantees Act 1993 (CGA)

For the purposes of section 5D of the FTA and section 43 of the CGA, the parties acknowledge and agree that:

- (a) the Services and Products (as applicable) that we provide to you under the Agreement are being provided and acquired in trade; and
- (b) to the extent permitted by law, in respect of all matters covered by the Agreement, the parties are contracting out of the CGA and sections 9, 12A and 13 of the FTA.

14.3 Product Certification

Detailed information about the certifications of the Products can be found in the respective Datasheets. We do not warrant that the Products meet comply with product certifications, quality assurance testing, performance testing or regulations stipulated or required in any given region or country of use and it is your responsibility to verify the Products can be imported, re-sold, installed, used and operated in the intended country or region of use.

You assume all liability concerning gathering information on use restrictions of frequency bands in every country and acting according to any applicable regulation.

14.4 Product return

We will not accept any Product returns except in accordance with under the warranty claim process expressed above.

14.5 Use of the User Manual documents

Use of the information contained in the User Manual is subject to the following terms and conditions of use:

- (a) We shall not be liable for any errors or incidental or consequential damage in connection with the furnishing, performance or use of the documents and the examples included.
- (b) No part of the documents may be reproduced, stored in a retrieval system, or transmitted in any form or any means electronic or mechanical, including photocopying and recording, for any purpose other than the readers' personal use, without our prior written consent.
- (c) We have created the documents for the personal use of Users as well as for external communication. The information in the documents, whether in whole or in part, cannot be used for commercial purposes without our prior written consent.
- (d) The information on our Websites has been included in good faith for general informational purposes only. It should not be relied upon for any specific purpose and no representation or warranty is given as to its accuracy or completeness.

15. Liability – Exclusion and Limitation

15.1 Indemnity

You agree to indemnify us from and against any loss, damage, liability, costs or expenses (including legal expenses) suffered or incurred by us in connection with any breach by you of this Agreement to the extent that such breach is not caused by our negligence.

15.2 Exclusions

To the maximum extent permitted by law, subject to clause 15.4, in no event will we be liable under or in connection with the Agreement (whether in contract, tort (including negligence) or otherwise) for any:

- (a) loss or corruption of data;

- (b) loss of profit, revenue, anticipated savings or goodwill; or
- (c) indirect or consequential losses,

regardless of whether such losses were contemplated.

15.3 Limitation on liability

In no event will our liability under or in connection with the Agreement (whether in contract, tort (including negligence) or otherwise) in any one year exceed:

- (a) the total Charges paid by you in the 6 calendar months immediately prior to the occurrence of the event(s) giving rise to the claim; or
- (b) if the Agreement has not been in effect for 6 months prior to the occurrence of the event(s) giving rise to the claim, the average monthly Charges paid by you for the months from the date of the Agreement until the occurrence of the event(s) giving rise to the claim, multiplied by 6.

15.4 Exceptions

Nothing in this Agreement shall limit either party's liability (as applicable):

- (a) to pay the Charges which are payable in accordance with this Agreement;
- (b) for a breach of clause 11 (Confidentiality);
- (c) for a breach of clause 12 (Intellectual Property);
- (d) for loss resulting from that party's fraud; or
- (e) for death or personal injury.

15.5 Network Operators and other suppliers not liable

None of our officers, employees, contractors or agents, nor any other Network Operator and/or third party supplier (including their officers, employees, contractors and agents) will be liable to you or anyone else for any claims, costs, damages, losses or other liabilities of any kind arising in any way from the Products and Services we provide or from your use of those Products and Services, including (without limitation) your use of any Network Operator's networks. The benefits of this clause are intended to extend to Network Operators, agents and suppliers and to be enforced by them under the Contract and Commercial Law Act 2017.

16. Disputes

16.1 Dispute procedure

If you have a dispute in connection with the Products or Services, please refer that dispute to Customer Services or your Account Manager. Neither you nor we will commence court proceedings (except where urgent interlocutory relief is required) until this clause 16 has been complied with. If unresolved after 10 Business Days, either party may refer the dispute to mediation (NZDRG rules) before commencing court proceedings.

17. Entire Agreement

The Agreement supersedes all prior discussions and agreements that you may have had with us regarding the subject matter of the Agreement and represents the entire agreement between the parties regarding such subject matter.

18. Force Majeure

18.1 Liability

Neither party will be liable to the other party for any failure to perform its obligations under the Agreement during the time and to the extent that such performance is prevented by reason of a Force Majeure Event.

18.2 Notice

The party seeking to rely on this clause will notify the other party as soon as practicable after the Force Majeure Event occurs and use its best endeavours to provide the other party with information regarding the extent of the affected party's inability to perform and an estimate of the time likely to be required to overcome the Force Majeure Event.

18.3 Mitigation

The affected party will use its best endeavours to remedy or mitigate the effect of the Force Majeure Event and to complete its obligations under the Agreement as far as reasonably practicable.

18.4 Charges

You will not be required to pay any Charges for any Services to the extent that such Services are not provided by us due to a Force Majeure Event.

18.5 Termination

Either party may terminate the Agreement by notice in writing to the other party, with immediate effect on the date specified in that notice, if a party has been unable to perform its obligations under the Agreement as a result of a Force Majeure Event for a continuous period of 60 Business Days.

19. General

19.1 Assignment

You may not assign any of your rights and/or obligations under the Agreement to any other person without first obtaining our prior written consent (which we may withhold at our sole discretion). From time to time we may assign any of our rights and obligations under this Agreement without your consent.

19.2 No contra proferentem

The rule of construction known as the contra proferentem rule does not apply to the Agreement.

19.3 Subcontracting

We may subcontract any or all of our obligations under the Agreement without your consent, but we will remain ultimately responsible to you for carrying out those obligations.

19.4 Compliance with policies

We will comply with your pre-notified and reasonable health and safety policies, as amended from time to time, when on your premises. In addition, we will also comply with the Health and Safety at Work Act 2015, including all regulations and codes of practices made thereunder.

19.5 No waiver or delay

Subject to clause 13.8, if either party delays or fails to enforce any of its rights or remedies under the Agreement, this will not constitute a waiver by that party of that or any other right or remedy available to it.

19.6 Severability

If the Agreement or any provision of the Agreement is held to be illegal, invalid, unenforceable or of no effect, then, to the extent permitted by law, the provision or provisions giving rise to such illegality, invalidity, unenforceability or lack of effect will be severed from the Agreement and the remaining provisions of the Agreement will remain in full force and effect.

19.7 Governing law

The laws of New Zealand govern the Agreement. The parties agree to submit to the exclusive jurisdiction of the courts of New Zealand. Where Products or Services are sourced from suppliers in other jurisdictions, disputes regarding those Products may, at our option, be governed by the laws of that jurisdiction.

19.8 Notice

- (a) Any notice you give us under this Agreement must be delivered via email to:
 - (i) info@sensable.com.au or any other address we advise you in writing.
- (b) Any notice we give to you under our Agreement will be delivered, posted or emailed to the address you provided us in the Sales Documentation or any other address you advise us in writing. We may also post notices on our Website and provide notification of such posting to you.

20. Interpretation

20.1 General rules

- (a) References to the singular include the plural and vice versa.
- (b) In interpreting the Agreement, references to either party include its respective successors in title and permitted assigns and references to "includes" or "including" do not imply any limitation.

20.2 Definition

In the Agreement, unless the context indicates otherwise:

Agreement means these Business Terms, together with the applicable Sales Documentation;

Business Day means any day other than a Saturday, Sunday or public holiday in Auckland;

Charges means:

- (a) the charges for the Services as set out in the applicable Sales Documentaion;
- (b) the charges for the Products as set out in the relevant Sales Documentation, plus any freight, insurance and delivery costs;
- (c) any GST or other taxes, levies, fees or other government charges relating to our Products and Services; and
- (d) any additional charges payable by you under the Agreement,

in each case as amended in accordance with the Agreement from time to time;

Datasheets means the technical specifications for the Products as set out on our Website;

Force Majeure Event means any event or circumstances beyond our reasonable control, including any act of God, fire, flood, storm, earthquake or any natural disaster, any act of a public enemy, terrorism, sabotage, embargo, malicious damage, riot or war, any Government intervention and any defect in or failure of any third-party electricity network or infrastructure, but does not include lack of funds for any reason;

GST means goods and services tax chargeable in accordance with the Goods and Services Tax Act 1985, as amended from time to time;

Network Operator means any entity with whom we have an arrangement to provide for the transfer of data from or to the Products;

Personal Information has the meaning defined in the New Zealand Privacy Act 2020);

Privacy Policy means our Privacy Policy as amended from time to time, available on our Website.

SOW means a statement of work (either physical or electronic) issued by us setting out the particular Products and Services to be supplied by us to you, and includes orders issued to you by us through any medium including generated by you through the Website;

Term has the meaning given in clause 2;

User means an individual end user of the Products and/or the Services;

Website means our website www.sensable.com.au