

flaxpod



Flaxpod Limited

Terms of Trade



**The parties agree:**

1. Any of the following by the Client constitutes acceptance of these terms:
  - (a) acceptance of any quote given by Flaxpod ; or
  - (b) giving Flaxpod instructions to act.
2. The Client must make all payments due to Flaxpod by due date, being the 20<sup>th</sup> of the month following the date the Services are invoiced on each occasion, time being of the essence. Payments may only be made by way of cleared funds payment to Flaxpod's bank account, unless Flaxpod otherwise agrees. All payments received by Flaxpod from the Client shall be appropriated by Flaxpod to those liabilities or obligations of the Client as Flaxpod in its sole discretion determines, and irrespective of any request or stipulation made by the Client, or date on which liabilities were incurred.
3. The Client must ensure that any pre-conditions are fully satisfied prior to Flaxpod commencing the provision of the Services/Products. The Client is also responsible for obtaining, at the Client's cost, any regulatory or other consents to enable Flaxpod to lawfully perform the Services.
4. The Estimated Start and Finish dates shown on the front page are estimates only and no claims may be made by the Client against Flaxpod if those dates are not adhered to.
5. Any quote provided by Flaxpod is valid for 30 days only, unless otherwise stated. Flaxpod reserves the right to give notice to the Client altering or amending a quote at any time prior to the supply of the Services where the alteration is due to an increase in the cost of the Services beyond Flaxpod 's control. Any quote once accepted by the Client is not able to be deferred or cancelled, unless Flaxpod agrees.
6. Where the Client requests the supply by Flaxpod of additional Services, these terms will continue to apply.
7. Flaxpod may vary or amend these terms at any time. The most current version of the terms is on Flaxpod's website [www.flaxpod.com](http://www.flaxpod.com) Any Services supplied after the date of variation of these terms by Flaxpod shall be deemed supplied subject to those varied terms.
8. These terms constitute the entire agreement between Flaxpod and the Client in respect of the supply of the Services and no warranties are made by Flaxpod to the Client other than as set out in these terms or in any other written communications signed by Flaxpod.



9. To better secure the payments due to Flaxpod under these terms, the Client grants to Flaxpod a security interest under the Personal Property Securities Act 1999 (“PPSA”) over all present and after acquired property of the Client. The Client will promptly upon Flaxpod’s request execute such other documentation as Flaxpod may require to ensure that the security interest created is perfected, including providing information for completion of a financing statement or financing change statement under the Act. The Client waives any right to receive a verification statement for any financing statement or change statement relating to the security interest. The Client’s rights as debtor under section 116, 119, 120(2), 125-127, 129 and 132 of the PPSA do not apply and nothing in sections 114(1)(a), 117(1), 133 and 134 of the PPSA applies to these terms.
10. The Client authorises Flaxpod to collect such personal, financial and other information about the Client as Flaxpod reasonably considers necessary to assess the credit worthiness of the Client, to enforce Flaxpod’s rights under these terms and at law and to disclose such information to other parties for those purposes. Where the Client is a person, this authority shall be sufficient authority for the purposes of the Privacy Act 1993, and the Client shall have to right to inspect and request corrections to such information held by Flaxpod.
11. The Client must give written notice to Flaxpod of any claimed defect in or dissatisfaction with the Services, within 90 days of the Services being performed, failing which the Services shall for all purposes be deemed to be of acceptable quality and no claim shall lie against Flaxpod by the Client. If the Client is at all dissatisfied with the developer providing the Services the client must notify Flaxpod within 5 days of the dissatisfaction.
12. The Client must not permit any alterations to its systems affecting the Services provided by Flaxpod without Flaxpod’s consent.
13. It is acknowledged that the supply of the Services by Flaxpod to the Client is a supply for business purposes only, and not for personal, domestic or household purposes and accordingly the Consumer Guarantees Act 1993 does not apply.
14. Flaxpod will perform the Services in a good and tradesman like manner. All other warranties (express or implied) and whether by statute, common law, equity, trade custom or common usage are excluded to the maximum extent possible at law.
15. Flaxpod’s maximum liability to the Client shall at all times be limited to an amount equal to the value of the Services performed in respect of the particular job undertaken by Flaxpod for the Client. Flaxpod is not liable in contract or tort or any other basis of legal liability in respect of any indirect or consequential loss or damage, nor loss of profit, business opportunity or goodwill as a result of any failure or omission on the part of Flaxpod to comply with its obligations under these terms.



16. Flaxpod is not liable for non provision or delay of the Services or to otherwise carry out its obligations under these terms if that failure arises from any circumstance reasonably outside of its control, or the effect of such failure could not be reasonably foreseen.
17. If the Client is in breach these terms, Flaxpod may suspend performing the Services until such time as the breach is remedied, and to also pass onto the Client, any additional costs incurred by Flaxpod in suspending and/or then resuming the supply of the Services and may also do any or all of the following:
  - (a) charge penalty interest at 20% per annum, calculated daily, on any monies outstanding
  - (b) refer any debt to a Debt Collection organisation (including legal firm) of Flaxpod 's choice and all that organisation's costs (on a full solicitor/client basis, where applicable) shall be payable by the Client on demand
  - (c) at any time thereafter cancel the agreement to supply the Services and
  - (d) otherwise exercise all remedies available at law.
18. Flaxpod may also cancel the supply of the Services to the Client by written notice to the Client if:
  - (a) any money is owing by the Client to Flaxpod for more than 10 working days after due date
  - (b) the Client has failed to satisfy any pre-conditions within 10 working days of the later of the Estimated Start Date/Date by way Flaxpod is ready to supply the Services
  - (c) the Client commits any act of insolvency, including bankruptcy, the appointment of a receiver or liquidator, or any proposal for a creditors comprises is put, or Flaxpod, acting reasonably, considers the Client is unable to pay its debts as they fall due.
19. Upon the termination all monies then owing by the Client to Flaxpod shall become immediately due for payment (notwithstanding any other provision of this agreement to the contrary) and Flaxpod shall be released from all obligations to supply the Services to the Client.
20. The Client agrees to indemnify Flaxpod against any loss whatsoever suffered by Flaxpod arising from the Client's breach of these terms.



21. During the supply of the Services, Flaxpod and the Client will exchange proprietary and/or confidential information relating to their respective businesses. Each party will
  - (a) use all reasonable measures to maintain the confidentiality of the information and prevent it being seen or utilised by unauthorised persons, or otherwise being used for any purposes commercially damaging to the other party
  - (b) not disclose or allow to be disclosed such information, nor use or modify the other's information for their own benefit or the benefit of third parties
  - (c) upon termination of this agreement, destroy all confidential information of the other party in its possession and not make any further use of it
  
22. The Client acknowledges that all copyright in the material created by Flaxpod in performing the Services, including source code, shall at all times remain the absolute property of Flaxpod and shall not in any circumstances vest in the Client.
  
23. If any dispute shall arise between the parties then representatives of each party shall promptly meet to discuss, to try to resolve the dispute. If no resolution is agreed within 14 days of that meeting, then either party may appoint an appropriate mediator to mediate the dispute, with that mediation to be held within one month of the appointment. The parties agree to attend and participate in the mediation in good faith. If the dispute is not resolved by mediation or other agreement, then it shall be submitted to the arbitration of one arbitrator and in accordance with the Arbitration Act 1996. If the parties cannot agree on an arbitrator, then the president or a vice president of the New Zealand Law Society shall appoint the arbitrator on the application of one or both of the parties and that appointment is binding on the parties. Nothing in this clause prevents a party properly taking proceedings or other action to enforce its rights at law, including to recover monies due from the other, seek specific performance or obtain injunctive relief, if there is no genuine dispute.