

Live Longer Limited T/A HiHo – Terms and Conditions

- (a) anything related to the Web Site, Hosting Services or any other Services provided;
- (b) any supplied content breaching any Acts, legislation or regulations, unless due to the negligence of HiHo;
- (c) any loss, corruption, or deletion of files or data (including, but not limited to software programmes) resulting from illegal hacking or Services provided by HiHo. Whilst HiHo will endeavour to restore the Web Site, files or data (at the Customer's cost), it is the sole responsibility of the Customer to back-up any data which they believe to be important, valuable, or irreplaceable prior to HiHo providing the Services. The Customer accepts full responsibility for the Customer's software and data and HiHo is not required to advise or remind the Customer of appropriate backup procedures (unless included as part of the Services);
- (d) any loss or damage to the Customer's software or hardware caused by any 'updates' provided for that software.
- 12.3 HiHo, its directors, agents or employees will not be liable in any way for any form of loss or damage of any nature whatsoever suffered, whether arising directly or indirectly, by the Customer or any person related to or dealing with the Customer out of, in connection with or reasonably incidental to the provision of the Services by HiHo to the Customer.
- 12.4 The Services are provided on an "as is, as available" basis. HiHo specifically disclaims any other warranty, express or implied, including any warranty of merchantability or fitness for a particular purpose.
- 12.5 **Public Access:**
- (a) The Customer understands that by placing information on the Web Site, such information may be accessible to all internet users. HiHo does not (unless expressly requested by the Customer) limit or restrict access to such information, nor protect such information from copyright infringement or other wrongful activity. The Customer assumes full responsibility for their use of the Services, and it is the Customer's sole responsibility to evaluate the accuracy, completeness and usefulness or all opinions, advice, services, and other information, and the quality and merchantability of all Services provided by HiHo, or on the internet generally.
13. **Defects, Errors, Omissions and Warranty**
- 13.1 The Customer shall inspect the Products on delivery and shall within five (5) days of delivery (time being of the essence) notify HiHo of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford HiHo an opportunity to inspect the Products within a reasonable time following delivery if the Customer believes the Products are defective in any way. If the Customer shall fail to comply with these provisions the Products shall be presumed to be free from any defect or damage. For defective Products, which HiHo has agreed in writing that the Customer is entitled to reject, HiHo's liability is limited to either (at HiHo's discretion) replacing the Products or repairing the Products.
- 13.2 Products will not be accepted for return other than in accordance with 13.1 above, and provided that:
- (a) HiHo has agreed in writing to accept the return of the Products; and
- (b) the Products are returned at the Customer's cost within ten (10) days of the delivery date; and
- (c) HiHo will not be liable for Products which have not been stored or used in a proper manner; and
- (d) the Products 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.
- 13.3 HiHo will not accept the return of Products for credit.
- 13.4 For defective Services, which HiHo has agreed in writing that the Customer is entitled to reject, HiHo's liability is limited to either (at HiHo's discretion) replacing the Services or rectifying the Services, provided that the Customer has complied with the provisions of clause 13.1.
- 13.5 For Products not manufactured by HiHo, the warranty shall be the current warranty provided by the manufacturer of the Products. HiHo shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Products.
14. **Protection of Reputation**
- 14.1 Any misuse, misrepresentation or any other action that negatively impacts the Provider's brand which is deemed to damage and/or tarnish the reputation of the Provider's brand, the Customer must cease and desist from such misuse, misrepresentation or other action immediately on receipt of a written notice from the Provider to this effect.
15. **Title**
- 15.1 HiHo and the Customer agree that the Customer's obligations to HiHo for the supply of Services shall not cease (and ownership of any Products shall not pass) until:
- (a) the Customer has paid HiHo all amounts owing to HiHo for the Services; and
- (b) the Customer has met all other obligations due by the Customer to HiHo in respect of all contracts between HiHo and the Customer.
- 15.2 Receipt by HiHo 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 HiHo's ownership or rights in respect of the Services, and this Contract, shall continue.
- 15.3 It is further agreed that, until ownership of the Products passes to the Customer in accordance with clause 15.1:
- (a) the Customer is only a bailee of the Products and must return the Products to HiHo on request;
- (b) the Customer holds the benefit of the Customer's insurance of the Products on trust for HiHo and must pay to HiHo the proceeds of any insurance in the event of the Products being lost, damaged or destroyed;
- (c) the Customer must not sell, dispose, or otherwise part with possession of the Products other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Products then the Customer must hold the proceeds of any such act on trust for HiHo and must pay or deliver the proceeds to HiHo on demand;
- (d) the Customer should not convert or process the Products or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of HiHo and must sell, dispose of or return the resulting product to HiHo as it so directs;
- (e) the Customer irrevocably authorises HiHo to enter any premises where HiHo believes the Products are kept and recover possession of the Products;
- (f) HiHo may recover possession of any Products in transit whether or not delivery has occurred;
- (g) the Customer shall not charge or grant an encumbrance over the Products nor grant nor otherwise give away any interest in the Products while they remain the property of HiHo;
- (h) HiHo may commence proceedings to recover the Charges notwithstanding that ownership of the Products has not passed to the Customer.
16. **Personal Property Securities Act 1999 ("PPSA")**
- 16.1 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 Products and/or all collateral (account) – being a monetary obligation of the Customer for the Services – that have previously been provided, and that will be provided in the future, by HiHo to the Customer.
- 16.2 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 HiHo may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, HiHo for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any registration made thereby;
- (c) not register a financing change statement or a change demand without the prior written consent of HiHo.
- 16.3 HiHo and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 16.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 16.5 Unless otherwise agreed to in writing by HiHo, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 16.6 The Customer shall unconditionally ratify any actions taken by HiHo under clauses 16.1 to 16.5.
17. **Security and Charge**
- 17.1 In consideration of HiHo agreeing to provide the Products/Services, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 17.2 The Customer indemnifies HiHo from and against all HiHo's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising HiHo's rights under this clause.
- 17.3 The Customer irrevocably appoints HiHo and each director of HiHo as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of
- this clause 17 including, but not limited to, signing any document on the Customer's behalf.
18. **Intellectual Property and Confidentiality**
- 18.1 Where HiHo has designed, drawn or developed Services (including the Web Site) for the Customer, HiHo retains full intellectual property ownership of the Services, including the copyright in any designs and drawings and documents, and HiHo hereby grants to the Customer an irrevocable, non-exclusive and non-transferable licence to use the Services solely in relation to the operation of the Customer's own business, conditional upon the Customer fulfilling their obligations under this Contract (including, but not limited to, the full payment of the Charges).
- 18.2 Subject to the Copyright Act 1994 and the conditions therein, where HiHo or their subcontractor has provided the Customer with a licence for use on any design, copy, writing, drawing, image, illustration, idea or code created for the Customer, the licence shall be for use by the Customer on a one-time only basis and may not be modified, re-used, or re-distributed in any way or form without the express permission of HiHo and any of its relevant subcontractors.
- 18.3 All design work where there is a risk that another party makes a claim, should be registered by the Customer with the appropriate authorities prior to publishing or first use or searches and legal advice sought as to its use. HiHo shall not be held responsible for any or all damages resulting from such claims.
- 18.4 The Customer hereby authorises HiHo to utilise images of the Services created by HiHo in advertising, marketing, or competition material by HiHo including, but not limited to:
- (a) the Customer permitting HiHo to place a small credit on printed material, exhibition displays, advertisement and/or link to HiHo's own web site on the Customer's Web Site, which shall usually be in the form of a small logo or line of text placed towards the bottom of the page;
- (b) using HiHo's logo on web sites and other designs, along with a link to the Customer's Web Site on HiHo's own web site for demonstration purposes and to use any designs in HiHo's own publicity;
- 18.5 The Customer shall indemnify HiHo against any claims by third parties for patent, trademark, design or copyright infringement, directly or indirectly arising out of the design, workmanship, material, construction, or use of the Services or any other deficiency therein. Where the Customer has supplied drawings, sketches, files or logo's to HiHo, the Customer warrants that the drawings, sketches, files or logo's do not breach any patent, trademark, design or copyright, and the Customer agrees to indemnify HiHo against any action taken by a third party against HiHo.
- 18.6 Notwithstanding anything to the contrary, the Intellectual Property Rights in HiHo's Services do not vest in the Customer and there is no assignment of those Intellectual Property Rights to the Customer. HiHo hereby grants to the Customer an irrevocable, non-exclusive and non-transferable licence to use and reproduce the Services for the purposes of this Contract only, and solely for the operation of the Customer's business however, the Customer shall not use nor make copies of such Intellectual Property in connection with any work or business other than the work or business specified in writing to HiHo unless express approval is given in advance by HiHo. Such licence shall terminate on default of payment or any other terms of this Contract by the Customer.
- 18.7 All Flash, PHP, Java Script, HTML and Dynamic HTML coding and other supplied code (if any) remains the intellectual property of HiHo. Copying or disseminating the code for any purpose whatsoever is strictly forbidden and will be a breach of copyright.
- 18.8 Each party agrees to treat all information and ideas communicated to it by the other confidentially and agree not to divulge it to any third party, without the other party's written consent. The parties will not copy any such information supplied, and will either return it or destroy it (together with any copies thereof) on request of the other party.
19. **Consumer Guarantees Act 1993**
- 19.1 If the Customer is acquiring Services 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 Services by HiHo to the Customer.
20. **Default and Consequences of Default**
- 20.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at HiHo's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 20.2 If the Customer owes HiHo any money the Customer shall indemnify HiHo from and against all costs and disbursements incurred by HiHo in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, HiHo's collection agency fees, and bank dishonour fees).
- 20.3 Further to any other rights or remedies HiHo may have under this contract, if a Customer has made payment to HiHo, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by HiHo under this clause 20 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 20.4 Without prejudice to any other remedies HiHo may have, if at any time the Customer is in breach of any obligation (including those relating to payment, whether or not the payment is due to HiHo) HiHo may suspend or terminate the provision of Services to the Customer, (this includes but is not restricted to, withholding domain names, passwords and Products, and/or blocking or restricting public and Customer access to the Web Site, or removing the Web Site from the web completely) and any of its other obligations under the terms and conditions. HiHo will not be liable to the Customer for any loss or damage the Customer suffers because HiHo has exercised its rights under this clause.
- 20.5 Without prejudice to HiHo's other remedies at law HiHo shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to HiHo shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to HiHo becomes overdue, or in HiHo's opinion the Customer will be unable to make a payment when it falls due;
- (b) the Customer has exceeded any applicable credit limit provided by HiHo;
- (c) 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
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
21. **Cancellation and Termination**
- 21.1 HiHo may cancel these terms and conditions or cancel provision of the Services at any time before the Services are provided by giving written notice. HiHo shall not be liable for any loss or damage whatever arising from such cancellation.
- 21.2 In the event that the Customer may cancel provision of the Services. In the event that the Customer cancels provision of the Services the Customer shall be liable for any costs incurred by HiHo (including, but not limited to, loss of profit) up to the time of cancellation. Where the Customer cancels an order:
- (a) the initial notification may be by telephone or email but must be confirmed in writing within fourteen (14) days;
- (b) the Customer shall be invoiced for all work completed over and above the non-refundable deposit as per clause 4.4;
- (c) where failure clause 21.3(a) occurs, the Customer shall be required to pay the full quoted cost of the Services.
- 21.4 Should the Customer, for any reason, cause the Services to be delayed for more than three (3) months after the acceptance date, this Contract will be terminated by HiHo (at their sole discretion) and all Services completed but not billed or paid, will be payable in full within fourteen (14) days from the date of the submitted invoice.
- 21.5 If the Customer fails to comply with any of the provisions of this Contract and does not rectify such non-compliance within seven (7) days of HiHo giving notice either in writing, via fax or email, then HiHo may without prejudice to any other rights or remedies, and without being liable to the Customer for any loss or damage that may result, give notice to the Customer terminating their right to use the Web Site, Software and Services. Upon termination of the Contract, the Customer shall lose all right to use the Web Site and Products, and shall forthwith deliver the Products to HiHo and destroy all copies made. The Customer shall certify in writing that the copies have been destroyed.
- 21.6 Upon termination of this Contract, HiHo will immediately delete all files and content relating to the Customer and the Services provided thereto.
- 21.7 It is the Customer's responsibility to make arrangements for the transfer of their data prior to the termination date. HiHo accepts no liability for any loss or damage incurred by the Customer as a result of the deletion of such data.
- 21.8 In the event the Services are terminated as per clauses 21.3 or 21.5, the Services can be re-instated under a new contract at the prevailing rates; however no credits or discounts will be granted and reinstatement costs shall apply.
- 21.9 **Fixed Term Contracts**
- (a) Where this contract relates to a fixed term contract, all payments shall fall due as per the payment schedule. To terminate the fixed term contract on, or after, the current term, the Customer must give HiHo not less than two (2) working days' notice prior to the current anniversary date of this Contract. The Services will then terminate at the end of the then current annual term. If the Customer does not terminate the Services on expiry of the current annual term, the Services shall revert to a month-by-month basis charge until otherwise agreed by both parties. Any additional Services shall become due and payable until agreed (as herein) is received.
22. **Privacy Policy**
- 22.1 All emails, documents, images or other recorded information held or used by HiHo is Personal Information as defined and referred to in clause 22.3 and therefore considered confidential. HiHo acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). HiHo acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by HiHo that may result in serious harm to the Customer, HiHo will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 22.2 Notwithstanding clause 22.1, privacy limitations will extend to HiHo in respect of Cookies where transactions for purchases/orders transpire directly from HiHo's website. HiHo agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:
- (a) IP address, browser, email client type and other similar details;
- (b) tracking website usage and traffic; and
- (c) reports are available to HiHo when HiHo sends an email to the Customer, so HiHo may collect and review that information ("collectively Personal Information").
- In order to enable / disable the collection of Personal Information first by way of Cookies, the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via HiHo's website.
- 22.3 The Customer authorises HiHo or HiHo's agent to:
- (a) access, collect, retain and use any Personal Information about the Customer;
- (i) (including, name, address, D.O.B, occupation, driver's license details, electronic credit card (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
- (ii) for the purpose of marketing products and services to the Customer.
- (b) disclose Personal Information about the Customer, whether collected by HiHo from the Customer directly or obtained by HiHo from any other source, to any other credit provider or other credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.
- 22.4 Where the Customer is an individual, the authorities under clause 22.3 are authorities or consents for the purposes of the Privacy Act 1993.
- 22.5 The Customer shall have the right to request HiHo for a copy of the Personal Information about the Customer retained by HiHo and the right to request HiHo to correct any incorrect Personal Information about the Customer held by HiHo.
23. **Service of Notices**
- 23.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this Contract;
- (c) by sending it by registered post to the address of the other party as stated in this Contract;
- (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
- (e) if sent by email to the other party's last known email address.
- 23.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
24. **Trusts**
- 24.1 If the Customer at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not HiHo may have notice of the Trust, the Customer covenants with HiHo as follows:
- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
- (b) the Customer has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
- (c) the Customer will not without consent in writing of HiHo (HiHo will not unreasonably withhold consent), cause, permit or suffer to happen any of the following events:
- (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
- (ii) any alteration to or variation of the terms of the Trust;
- (iii) any advancement or distribution of capital of the Trust; or
- (iv) any resettlement of the trust property.
25. **Dispute Resolution**
- 25.1 HiHo and the Customer will negotiate in good faith and use their reasonable efforts to settle any dispute that may arise out of, or relate to, this Contract, or any breach thereof. If any such dispute cannot be settled amicably through ordinary negotiations, the dispute shall be referred to the representative nominated by each party who will meet in good faith in order to attempt to resolve the dispute. Nothing shall restrict either party's freedom to commence legal proceedings to preserve any legal right or remedy or protect and proprietary or trade secret right.
26. **General**
- 26.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable for any reason, the validity, enforceability and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 26.2 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 Auckland Courts of New Zealand.
- 26.3 HiHo shall be under no liability whatsoever to the Customer for any expenses, claims, costs (including but not limited to legal fees and commissions), damages suffered or incurred by HiHo, or indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by HiHo of these terms and conditions, caused by any failure by the Customer to comply with their obligations under this Contract, or that arise from any claim relating to the Services by any person that the Customer authorises to use the Services, or where due to server downtime or programming errors (attributable to HiHo's liability) shall be limited to damages which under no circumstances shall exceed the Charges).
- 26.4 HiHo may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
- 26.5 The Customer cannot licence or assign without the written approval of HiHo.
- 26.6 HiHo may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of HiHo's sub-contractors without the authority of HiHo.
- 26.7 The Customer agrees that HiHo may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for HiHo to provide Products and/or Services to the Customer.
- 26.8 Neither party shall be liable for any default due to fires, explosions, severe weather, industrial disputes, insurrection, requirements or regulations, or any civil or military authority, acts of war (whether declared or not), civil unrest, acts of God, earthquake, flood, riot, embargo, government act, strike, lock-out, storm, terrorism, or failure or outage of any telecommunications links or other connections forming part of the Internet which are beyond the reasonable control of either party.
- 26.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.