

# InfoTrack General Terms and Conditions (Services)

## 1. Definitions

**'Authorised Purposes'** means a purpose directly related to the Service provided that that purpose is not contrary to Law but does not mean data aggregation, data matching, marketing, compilation or mailing lists, list brokering, or any related purpose except to the extent that such data aggregation, data matching, marketing, compilation or mailing lists, list brokering or the like is required under Law (including any obligation under a court order);

**'Agreement'** means these Terms and Conditions and any applicable client order form.

**'Confidential Information'** in relation to a party (**Disclosing Party**) means any information disclosed by the Disclosing Party to the other party (**Receiving Party**) under this Agreement that:

- (a) is by its nature confidential;
- (b) is designated by the Disclosing Party as confidential; or
- (c) the Receiving Party knows or ought to know is confidential,

but does not include information that is:

- (d) in the public domain otherwise than as a result of a breach of this Agreement;
- (e) already known by the Receiving Party independently; or
- (f) independently developed or obtained by the Receiving Party without breach of this Agreement.

**'GST Law'** in relation to a supply of services in New Zealand, means the Goods and Services Tax Act 1985.

**'InfoTrack' and any reference to 'we', 'us', or 'our'** means InfoTrack Limited (New Zealand).

**'InfoTrack Website'** means the content available at: <https://www.infotrack.nz/>.

**'Insolvency Event'** in relation to a party means the occurrence of any of the following:

- (a) a receiver, receiver and manager, liquidator, provisional liquidator, administrator or trustee is appointed in respect of that party or any of its assets;
- (b) an application is made to court or a resolution is passed or an order is made for the winding up or dissolution of that party;
- (c) that party proposes or takes any steps to implement a scheme of arrangement or other compromise or arrangement with its creditors or any class of them; or
- (d) that party is declared or taken under any applicable law to be insolvent or that party's board of directors resolves that it is, or is likely to become at some future time, insolvent.

**'Intellectual Property Rights'** means all industrial and intellectual property rights both in New Zealand and throughout the world, whether now known or devised in the future, and for the duration of the rights including any patents, copyright, registered or unregistered trade marks or service marks, registered designs and commercial names and designations, circuit layouts, database rights, and rights in relation to confidential information, insights, analytics and trade secrets, whether or not registered or registrable.

**'Laws'** means (whether in New Zealand or any other relevant jurisdiction) all laws, codes,

guidelines and the like, including rules of common law, principles of equity, statutes, regulations, proclamations, ordinances, by-laws, rules, regulatory principles and requirements, statutory rules of an industry body, statutory and mandatory codes of conduct, writes, orders, injunctions, judgements and industry-wide non-statutory rules in force or as applicable from time to time.

**'Price List'** means the list of InfoTrack's product and service fees accessible from the InfoTrack Website, updated from time to time.

**'Service'** means the InfoTrack online system, InfoTrack Website, InfoTrack products, Securexchange Services, and other manual services and InfoTrack support, unless otherwise specified.

**'Securexchange Services'** means the services provided at <https://secureexchange.co.nz/>.

**'User'** means an individual, entity or organisation authorised to use the Service, including staff members or agents acting on behalf of the individual, entity or organisation authorised to use the Service.

## **2. Term**

- (a) The User will be bound by the terms and conditions set out in this Agreement from the date that the User first accesses or uses the Services until terminated by either party in accordance with this Agreement.
- (b) This Agreement will apply to all visitors, users, members, contributors and others who access the Services. Where such a person accesses the Services on behalf of an entity or organisation, that entity or organisation will be bound by this Agreement.

## **3. Updates to the InfoTrack Terms and Conditions (Services)**

- (a) Users can, at any time, access the then-current, latest version of the InfoTrack Terms and Conditions (Services) through a hyperlink on the relevant web page(s) including but not limited to: <https://www.infotrack.nz/>
- (b) InfoTrack may from time to time vary the conditions of this Agreement, by giving notice (for example, by way of email or push notification) of such variation to the User. This may include the prices at which the Service is to be provided however InfoTrack agrees not to vary the prices more than once every six (6) months.
- (c) In accessing the Services, it will be taken that the User accepts the updated conditions.

## **4. InfoTrack responsibilities**

- (a) InfoTrack provides the Services on a non-exclusive basis and nothing in this agreement prevents InfoTrack from providing services which are the same or similar to itself or to any third party.
- (b) InfoTrack will perform the Services:
  - (i) in a professional workmanlike manner
  - (ii) with due care, skill and diligence; and
  - (iii) in accordance with applicable Laws.

## **5. User responsibilities**

- (a) The User will:
  - (i) use the Services for the Authorised Purposes;

- (ii) be responsible for Users' compliance with this Agreement (including any applicable client order forms);
  - (iii) use reasonable efforts to prevent unauthorised access to or use of the Services;
  - (iv) notify InfoTrack promptly if the User becomes aware of any possible or actual unauthorised access or use of the Services;
  - (v) ensure that the Users' use of the Services is in accordance with any applicable Laws;
  - (vi) accept all responsibility in relation to verifying data entered into any Service offered by InfoTrack, including, but not limited to, client details, court orders, and dates;
  - (vii) be responsible for verifying data has correctly synchronised with integrated platforms such as government websites and third-party software.
- (b) The User will not;
- (i) make the Services available to any person other than as specified in the client order form;
  - (ii) commercialise the Services;
  - (iii) use the Services to store or transmit illegal materials or malicious code.
  - (iv) use the Services in any way that may be illegal, obscene, threatening, defamatory, invasive of privacy, infringing intellectual property rights or otherwise injurious to third- parties.
  - (v) submit or upload any content containing viruses, political advertising, commercial solicitation, mass mailings, or any form of spam or any information or program that may damage the operation of anyone else's computer.
  - (vi) use a false e-mail address, impersonate any person or entity, or otherwise mislead anyone as to the Customer's origin (except to the extent that InfoTrack permits the use of a pseudonym, moniker, or Customer name).
- (c) The User warrants that all information that the User provides to InfoTrack may be used by InfoTrack in providing the Services without breaching or infringing:
- (i) any copyright, trade mark, obligation of confidentiality or other personal or proprietary right;
  - (ii) any law of defamation, obscenity or contempt of any court;
  - (iii) any law concerning privacy; or
  - (iv) any other law or applicable code (including any common law, statute, delegated legislation, rule or ordinance).
- (d) Certain government departments and agencies impose terms and conditions and limitations of liability in respect of the obtaining and use of information and searches from those departments and agencies. The User agrees to comply with the terms and conditions of supply and use imposed by any relevant government departments and agencies from time to time.

## **6. Payments and Charges**

- (a) All charges are payable net thirty days from date of a tax invoice, or as otherwise specified by InfoTrack at its discretion.
- (b) InfoTrack reserves the right to retain service fees where a search result is cancelled, or the search result is NIL. Each refund is assessed based on its own merits and requires the relevant Authority to refund the applicable charges.
- (c) If the User defaults in paying any amounts due and payable in accordance with paragraph (b), InfoTrack reserves the right at its sole discretion, without limiting InfoTrack's other rights and remedies under this Agreement:
  - (i) to suspend access to the Service until such amounts are received in full;
  - (ii) if payment is not made within 14 days of the due date specified in the tax invoice, to cease providing you access to the Service and terminate this Agreement with immediate effect; and
  - (iii) to charge penalty interest at a rate of 15% per annum on any amounts outstanding until those amounts, and any interest, are paid in full.
- (d) If any amounts are due and payable but not received by InfoTrack within thirty (30) days from the date on which such amounts fall due (as specified in the order form), then, at InfoTrack's sole discretion, we may;
  - (i) terminate this Agreement (and any applicable client order form) immediately; and
  - (ii) transfer the right to receive, recover or pursue such amounts to a third party and the User will be liable to InfoTrack and/or the third party for any associated costs until such time as such amounts are paid in full to such third party

## **7. Payment information**

- (a) All information that you provide in connection with a purchase or transaction or other monetary transaction interaction with the InfoTrack Service must be accurate, complete, and current. You agree to pay all charges incurred by users of your credit card, debit card, direct debit or other payment method used in connection with a purchase or transaction or other monetary transaction interaction with the InfoTrack Service at the prices in effect when such charges are incurred.

## **8. GST**

- (a) All charges payable under this Agreement will be PLUS GST (if any).

## **9. Licence**

- (a) In using the Services, the User grants to InfoTrack a non-exclusive, royalty-free, transferable, sub-licensable, worldwide license to host, use, distribute, modify, run, copy, publicly perform or display, translate, and create derivative works of your content (consistent with the InfoTrack Privacy Policy). The User can end this license anytime by deleting their account.

## **10. Warranty**

- (a) Both parties warrant that they have the capacity, power and authority to enter into and perform this Agreement and have obtained all necessary approvals, consents and authorisations to enable it to do so.
- (b) To the maximum extent permitted by applicable law, InfoTrack provide the Services

to the User on an "as is" basis and InfoTrack does not make or give any express or implied representations, conditions or warranties in relation to the Services, including InfoTrack do not warrant that the Services will operate uninterrupted, be free from defects or viruses or meet the Users' requirements.

- (c) Without limiting paragraph (b), the User acknowledges that:
- (i) InfoTrack does not provide any legal advice or legal services, accounting or other professional services advice by providing the User access to the Services;
  - (ii) InfoTrack does not warrant or represent the accuracy, currency or quality of any legal or accounting information, any data provided by the User or any other information practice guides, legal forms, precedents, letters or documents which are provided as examples only and on the basis that the User is suitably qualified (or working under the direction of suitably qualified personnel) and will not rely on such documents;
  - (iii) InfoTrack does not warrant or represent the accuracy, currency, reliability or completeness of data provided by integrated platforms such as government websites and third-party software;
  - (iv) InfoTrack does not warrant the accuracy or timeliness of searches provided by any government department or agency or other third-party provider;
  - (v) InfoTrack does not warrant or represent that the Services can be accessed or operate without defects, data corruptions, software failures or performance degradation caused by viruses or by other software or components on the Users' or third-party hardware that may interfere with the Software (including any third party internet networks); and
  - (vi) InfoTrack do not warrant or represent that any of the data supplied by the User and hosted on InfoTrack servers is secure, can be accessed uninterrupted or will be free from defects and viruses or will be stored, hosted or accessed without any loss or damage, data corruption, software failures or degradation.
- (d) The User warrants that they are 'in trade' (for the purposes of the Fair Trading Act 1986 (NZ) (FTA)) and that Services are being supplied to the User to assist the User in carrying out its trade. The parties agree to contract out of sections 9, 12A, 13, or 14(1) of the FTA and acknowledge that the Consumer Guarantees Act 1993 does not apply.

## **11. Liability**

- (a) The Users' sole and exclusive remedy for InfoTrack's breach of any statutorily implied warranties, conditions or guarantees which cannot lawfully be excluded is, to the extent legally permitted, limited to, at InfoTrack's option, either providing those Services again or paying the cost of providing those Services again in respect of which the breach occurred.
- (b) To the maximum extent permitted by applicable law, InfoTrack excludes and will not be liable for any loss of revenue, business, anticipated savings or profits, loss of goodwill, loss of any data provided by the User to InfoTrack or for any indirect or consequential loss arising out of or relating to the Services or this Agreement (including any applicable client order form).
- (c) To the maximum extent permitted by applicable law, InfoTrack's liability arising under or in connection with this Agreement which is not otherwise excluded by paragraphs (a) and (b), is limited, in the aggregate, to the service fees paid or payable by the User for the particular service to which such liability relates.

- (d) Our limitations and exclusions of liability as set out in this clause 11 apply regardless of the basis on which the relevant liability arises, whether in contract, tort (including negligence), equity, breach of statutory duty or otherwise.

## **12. Users, password and user manuals**

- (a) InfoTrack shall issue the User with a User ID and Password allowing access to the Services. The User is responsible for the acts of its own employees and contractors and, without limitation must ensure that it protects the secrecy of any passwords issued to the User and controls the use of the Services by its employees and contractors. The User is responsible for all charges incurred on the User's account (and will pay such amounts as invoiced by InfoTrack as if such amounts were incurred by the User).
- (b) Where the User requests in writing that InfoTrack cancel a particular password or account, InfoTrack will use its reasonable endeavours to cancel that password or account as soon as practicable in normal business hours following receipt of that request.
- (c) The User must notify InfoTrack of any actual or suspected loss, theft or unauthorised use of the Service or passwords. InfoTrack is not liable for any activity or any unlawful or unauthorised access to the Service.

## **13. Additional Services, Upgrades and Enhancements**

- (a) In introducing any additional services InfoTrack may add to or vary the conditions of this Agreement as they apply to those additional services by notification on-screen or by written notice to the User of variation to the terms and conditions of this Agreement. Usage of the additional services by the User after such notification shall be taken as agreement by the User to be bound by the conditions so displayed or notified.
- (b) From time to time InfoTrack may, at its sole discretion modify, upgrade, enhance or alter the Services at its sole discretion. All such modifications, upgrades, enhancements or alterations shall also be governed by the terms of this Agreement unless otherwise specified by InfoTrack.

## **14. Restrictions**

- (a) Subject to the terms of this Agreement, we grant you a non-exclusive, non-transferable, revocable, limited licence to access and use the software included with the Services for the Term of this Agreement solely for your internal business purposes.
- (b) InfoTrack is the sole and exclusive owner of all right, title and interest (including all Intellectual Property Rights) in or in relation to the Services or any materials provided by InfoTrack under this Agreement.
- (c) InfoTrack is the owner of the copyright in the compilation of the information used to supply the Services, and in the reports supplied to Users when using InfoTrack's Services. InfoTrack has developed information technology, software and documentation that it may use to provide the information services to Users, and InfoTrack has copyright and other rights in those items. The User will not copy them, modify them, adapt them, reverse engineer them or infect them with viruses.
- (d) Except as permitted under this Agreement, the User must not, nor must the User authorise any third party to:
  - (i) rent, lease, reproduce, modify, adapt, create derivative works of, distribute, sell, sublicense, transfer, or provide access to the Service to a third party;
  - (ii) use the Service for any illegal purpose, or in violation of any laws

(including without limitation data, privacy and export control laws);

- (iii) interfere with any license key mechanism in the Service or otherwise circumvent mechanisms in the Service intended to limit your use;
- (iv) reverse engineer, decompile, disassemble, or otherwise attempt to discern the source code of the components of the Service or reproduce all or any portion of the said components; and
- (v) redistribute content from the Service (unless the content is specifically made for redistribution), without the written consent of InfoTrack, other than to the extent necessary to view the material as permitted by law.

## **15. Privacy**

- (a) InfoTrack collects personal information in accordance with its Privacy Policy, available on the InfoTrack Website and updated from time to time. By using the InfoTrack services User acknowledges that it has read, understood and agrees to InfoTrack Privacy Policy.
- (b) You must ensure that when you collect, use, disclose, transfer or otherwise handle Personal Information in relation to the Services or your obligations under this Agreement, you comply at all times with applicable Privacy Laws, procure that Users comply with applicable Privacy Laws, and not do anything with the handled Personal Information that will cause us to breach our obligations under Privacy Laws.

## **16. Confidential Information**

- (a) The Receiving Party may only use the Confidential Information of the Disclosing Party for the purposes of exercising its rights or performing its obligations under this Agreement.
- (b) The Receiving Party must keep confidential, and not disclose, the Confidential Information of the Disclosing Party, except as permitted under paragraph (d).
- (c) This clause extends to Confidential Information of a party provided to or obtained by the other party before the Commencement Date.
- (d) The Receiving Party may disclose Confidential Information of the Disclosing Party:
  - (i) to those of its personnel or any third party that need to know for the purposes of the Receiving Party exercising its rights or performing its obligations under this Agreement, provided that the Receiving Party uses its reasonable endeavours to ensure that such personnel or third parties keep the Confidential Information confidential in a manner consistent with the Receiving Party's obligation under this clause 16;
  - (ii) to those third parties that need to know for the purposes of monitoring and analysing the Disclosing Party's usage of the Services and to assist with improving the Services provided under this Agreement;
  - (iii) to the extent that disclosure is required by Law provided that the Receiving Party provides the Disclosing Party reasonable notice before any such disclosure and takes all reasonable steps to maintain that Confidential Information in confidence; or
  - (iv) with the prior written consent of the Disclosing Party.

## **17. Third Party Information**

- (a) The InfoTrack Website may contain links to or provide information posted by, contributed to or advertised by third parties (Third Party Content). InfoTrack does not

warrant the accuracy of any third-party content. The inclusion of such links or material is not an endorsement or recommendation by InfoTrack and InfoTrack accepts no liability for any Third-Party Content or for any loss or damage the Customer may suffer by accessing such websites or acquiring any goods or services from the suppliers of those websites or otherwise using or relying on Third Party Content.

- (b) The User agrees that the User will use its own expertise and judgment when considering any Third-Party Content and the Customer acknowledges that InfoTrack is not providing any advice or recommendation in respect of any products, services or other information.

## **18. Termination**

- (a) Either party may terminate this Agreement for cause with immediate effect by providing written notice to the other party if the other party:
  - (i) commits a material breach of this Agreement that is capable of remedy and fails to remedy that breach within seven (7) days after receiving written notice identifying the breach and requiring the breach to be remedied;
  - (ii) commits a material breach of this Agreement that is not capable of remedy; or
  - (iii) is the subject of an Insolvency Event.
- (b) InfoTrack may terminate this Agreement for convenience at any time by providing at least 30 days written notice to you.
- (c) If this Agreement is terminated or expires:
  - (i) the Users' right to access or use the Services ceases; and the User must immediately pay all outstanding amounts due and payable under this Agreement.
- (d) Any provision of this Agreement which, by its nature, would reasonably be expected to be performed after the termination of this Agreement, shall survive and be enforceable after termination of this Agreement. Accordingly, any of InfoTrack's, or the User's, accrued rights or remedies under this Agreement shall not be affected by the termination of this Agreement.

## **19. Force Majeure**

InfoTrack shall not be liable for any delay, loss or damage (including consequential loss) caused to the User directly or indirectly by the unavailability of access to the Service caused by the failure of the User to comply with this Agreement, power or mechanical failure howsoever caused, delays or failures in telecommunication systems or in the transmission of information via the internet or any cause whatsoever outside the control of InfoTrack.

## **20. Entire Agreement**

This Agreement and any client order form attached to or referred to herein constitute the entire agreement between the parties in respect of the Services and supersede all other negotiations, agreements or understandings whether written or oral relating to the supply of the Services.

## **21. Assignment and Notices**

InfoTrack may by notice in writing to the User assign the benefits and obligations of this Agreement. Users may only assign this Agreement with the consent in writing of InfoTrack.

## **22. Severability**



If a provision of this Agreement or a right or remedy of a party under this Agreement is invalid or unenforceable it is read down or severed only to the extent of the invalidity or unenforceability.

**23. Governing Law**

This Agreement (including all client order forms) are governed by the laws in force in New Zealand, and each party irrevocably and unconditionally submits to the exclusive jurisdiction of New Zealand and the courts that hear appeals from them.