



## inStore Terms and Conditions

These terms of use explain our obligations as a supplier of the Products and Your obligations as a customer. Please read them carefully.

These terms of use are binding on any use of the Products or any inStore services by You and apply to You from the time that inStore first provides You with access to the Products.

By commencing use of inStore You acknowledge that You have read and understood these terms of use and have the authority to enter into this Agreement.

inStore reserves the right to change these terms of use at any time, effective upon the posting of modified terms of use. It is likely these terms of use will change over time. inStore will make every effort to communicate any changes to You prior to them becoming effective but it is Your obligation to ensure you have read, understood and agree to the most recent terms of use available on the Website.

### 1. DEFINITIONS

1.1. In this Agreement:

**"Agreement"** means these terms of use, as modified by inStore from time to time.

**"Business Day"** means a day on which banks are open for general business in Auckland, New Zealand, excluding Saturdays and Sundays.

**"Fees"** means the fees (excluding any taxes and duties) payable by You for Products and services provided by inStore in accordance with the Fee Schedule that is found in this agreement or the Cost Calculator which is available on the Website.

**"Confidential Information"** includes all information exchanged between the parties to this Agreement, whether in writing, electronically or orally, but does not include information which is, or becomes, publicly available other than through unauthorised disclosure by the other party.

**"Data"** means any data inputted by You or with Your authority into the Products.

**"Intellectual Property"** means any patent, trade mark, service mark, copyright, moral right, right in a design, know-how and any other intellectual or industrial property rights, anywhere in the world whether or not registered and in the case of inStore includes any such right or interest held by any holding company of inStore or any subsidiary of any such holding company.

**"Product/s"** means the administration website and the smart phone/tablet application that allows users to access the systems.

**"You"** means the Customer and "Your" has a corresponding meaning.

**"inStore"** means inStore retail support system, a product of Intuto Limited. **"Website"** means the Internet site(s) at the parent domain [www.instorehq.com](http://www.instorehq.com) or any other site operated by inStore.

**"inStore set up form"** means the details to be provided by You to enable the Products to be correctly set up for You.

### 2. INSTORE RESPONSIBILITIES

2.1. inStore will:

- 2.1.1. Ensure the details in the Products that are specific to You are set up to Your specifications.
- 2.1.2. Provide initial training to You to enable You to perform necessary administration operations and to be able to train your staff in the use of the Products. This may be provided as an online resource or face to face at inStore's sole discretion.
- 2.1.3. Invoice You for at the end of each month for the Products in accordance with the Fee Schedule.
- 2.1.4. Ensure that the Products perform as presented and that all updates, amendments and other adjustments that may be made from time to time are done in such a way that performance of the Products is not unreasonably affected.

### 3. YOUR RESPONSIBILITIES

3.1. You will:

- 3.1.1. Complete the inStore Set Up Form found at the end of this Agreement (Addendum A)
- 3.1.2. Provide inStore with reasonable assistance, in a timely manner, to enable inStore to provide You access to the Products.
- 3.1.3. Pay all inStore invoices on the 20<sup>th</sup> of the month following the date of the invoice.
- 3.1.4. Use the Products solely for the purposes of this Agreement and not do anything that might interfere with the operation of the Products.
- 3.1.5. Not do anything that could reasonably be expected to harm the reputation of the Products or inStore and use all reasonable endeavours to enhance the reputation of the Products and inStore.
- 3.1.6. Agree to maintain monthly payments to inStore for at least 6 months from your first payment.
- 3.1.7. Within 15 Business Days of any written request, provide inStore with any information that it may request in relation to Your operations insofar as it relates to the provision of the Products to end users, including Data, provided that inStore must maintain the confidentiality of such information and may only use the information for the purposes of this Agreement.

### 4. INTELLECTUAL PROPERTY AND CONFIDENTIAL INFORMATION

- 4.1. You will use all reasonable endeavours to protect the Intellectual Property of inStore and shall not dispute or otherwise challenge ownership or any other rights in such Intellectual Property. You will not use the Intellectual Property of inStore other than in accordance with this Agreement. Except as is expressly provided in this Agreement, neither party will disclose any Confidential Information to any person except with the prior written consent of the party that has provided such Confidential Information.
- 4.2. You own all Intellectual Property in the Data except where the data is aggregated for industry development purposes in which case the data will be totally anonymous and the aggregated data will be the property of inStore.

- 4.3. If You become aware of any person making unauthorised use of the Intellectual Property of inStore, You will immediately advise inStore. Without limiting any other rights or remedies of inStore, inStore may without notice terminate or suspend any person's access to the Website if it believes, acting reasonably, that such person is making unauthorised use of the Intellectual Property of inStore or is otherwise disrupting operation of the Website.

## 5. TERMINATION

- 5.1. Either party may terminate this Agreement without cause at any time subject only to giving the other party at least thirty (30) Business Days prior written notice.
- 5.2. inStore may by written notice terminate or suspend this Agreement with immediate effect if:
  - 5.2.1. You breach this Agreement and, if capable of remedy, You fail to remedy that breach within five (5) Business Days of receiving written notice of that breach;
  - 5.2.2. You file for bankruptcy, make any arrangement with Your creditors, become insolvent, have a receiver or manager appointed of any of Your assets, or any similar event occurs in relation to You or Your operations in any jurisdiction.
- 5.3. Termination of this Agreement is without prejudice to any rights and obligations of the parties accrued up to and including the date of termination. On termination of this Agreement You will remain liable for any accrued charges and amounts which become due for payment before or after termination and You must immediately cease to use or provide to end users the Products and any other inStore services and must cease operation of the Site.

## 6. LIABILITY

- 6.1. To the maximum extent permitted by law, in no event will inStore be liable to You for consequential or indirect losses of whatever nature nor for loss of profits or revenue or loss of opportunity, in each case whether direct or indirect.
- 6.2. To the maximum extent permitted by law, inStore does not make any express or implied warranty or claim in respect of the Products or any of its services, it being Your responsibility to satisfy Yourself that the Products and such services meet Your requirements and the requirements of end users.
- 6.3. If You suffer loss or damage as a result of inStore's negligence or failure to comply with this Agreement, any claim by You against inStore arising from inStore's negligence or failure will be limited in respect of any one incident or series of related incidents to the Fees paid by You in the previous 3 months.
- 6.4. If You are not satisfied with the Products or any services provided by inStore, Your sole and exclusive remedy is to terminate this Agreement in accordance with Clause 7.
- 6.5. To the fullest extent permitted by applicable law, inStore makes no warranty of any kind, whether express, implied, statutory or otherwise, including without limitation warranties of merchantability, fitness for a particular purpose and non-infringement. inStore makes no representation about any content or information supplied or made accessible by operation of this Agreement or otherwise.

## 7. NOTICES

- 7.1. Any notice given under this Agreement by either party to the other must be in writing by email and will be deemed to have been given on transmission. Notices to inStore must be sent to admin@intuto.com or to any other email address notified by email to You by inStore. Notices to You will be sent to the email address which You provide on this agreement.

## 8. FORCE MAJEURE

- 8.1. Neither party will be liable for any act, omission, or failure to fulfill its obligations under this Agreement if such act, omission or failure arises from any cause beyond its reasonable control ("Force Majeure"). Lack of economic means, however caused, shall not constitute Force Majeure and neither party may rely on Force Majeure as a reason not to meet any payment obligation under this Agreement.
- 8.2. The party unable to fulfill its obligations due to Force Majeure will immediately:
  - (a) notify the other in writing of the reasons for its failure to fulfill its obligations and the effect of such failure, including an estimate of the time likely to be required to overcome the event; and
  - (b) use all responsible endeavours to avoid or remove the cause and perform its obligations.

## 9. ASSIGNMENT

- 9.1. You may not assign or transfer any rights to any other person without inStore's prior written consent which it may withhold in its absolute discretion.

## 10. ENTIRE AGREEMENT

- 10.1. This Agreement together with the current Fee Schedule constitutes the entire Agreement between the parties with respect to the matters dealt with in this Agreement and supersedes all or any prior oral or written understandings, representations or commitments of any kind. Except as expressly provided otherwise in this Agreement, this Agreement may only be varied by agreement in writing signed by both parties.

## 11. WAIVER

- 11.1. If either party waives any breach of this Agreement, this will not constitute a waiver of any other breach. No waiver will be effective unless made in writing.

## 12. GOVERNING LAW

- 12.1. This Agreement is governed by, and is to be construed in accordance with, the laws of New Zealand. The parties submit to the non-exclusive jurisdiction of the Courts of New Zealand in relation to all matters arising out of or in connection with this Agreement.

## 13. SEVERABILITY



- 13.1. If any part or provision of this Agreement is invalid, unenforceable or in conflict with the law, that part or provision is replaced with a provision which as far as possible, accomplishes the original purpose of that part or provision. The remainder of this Agreement will be binding on the parties.

#### **14. PRICING AND PAYMENT**

- 14.1. The prices for the provision of the Products and any services provided by inStore are set out in the Fee Schedule. inStore may amend the Fee Schedule (whether prices, pricing structure or payment terms) at any time subject only to giving You at least 60 Business Days prior written notice of that amendment. Posting of any amendments on the Website shall constitute notice to You of those amendments.
- 14.2. If any Fees (plus any applicable tax or duty) invoiced by inStore are not paid by You by the applicable due date, interest may accrue on any unpaid amount at the standard NZ trading bank interest rate accruing daily and compounding monthly.
- 14.3. inStore reserves the right to amend pricing with 60 days notice.
- 14.4. The pricing confirmed at the date of this agreement is based on the projected number of users provided by You and will remain in place until there is a change in the number of users of +/- 20% confirmed either by You or by inStore based on inStore's review of the user numbers in the system from time to time. If there is a +/- 20% change in the number of users (based on an average number of users over the most recent two months), the monthly invoice will be amended accordingly in the next billing period.
- 14.5. Fees.  
Your monthly fee will be confirmed in writing at the commencement of inStore's engagement with you and adjusted according to 14.4 above or at any time at the discretion of inStore.