

Software License Terms and Conditions

Parties

1. Systemise Ltd (“Licensor”)
2. You (the end user) (“Licensee”)

Background

A. The Licensor has entered into a License Agreement with Punaha Ltd, which enables the Licensor to sell and sublicense software called “Systemise”, which is a cloud-based management system with a number of potential uses, including scheduling bookings, quoting, jobs, invoicing and conversion statistics (the “Software”).

B. The Licensor grants and the Licensee accepts a non-exclusive and non-transferable license to use the Software (the “License”).

Agreement

1. Software License and Term

1. In reliance on the acceptance of this agreement, the Licensor agrees to enable access and use of the Software to the Licensee.
2. By continuing to use the Software, the Licensee agrees to any updated terms, as posted from time to time on the Licensor’s website.
3. The Licensee must use the Software solely for the purposes of the Licensee’s business.
4. The license is on a month by month basis.

2. Free Trial

1. The Licensor may provide the Software to the Licensee for a 30-day trial period, free of charge.

3. License Fees

1. The following License Fees are payable depending on the type of account selected:
 - a.. Small account - A License Fee of \$39 plus GST per month. This includes 1 to 5 users and 5GB of file storage. A charge will apply for any data stored above the 5GB limit (\$20 plus GST for an additional 10GB allocation of file storage).

b.. Medium account - A License Fee of \$79 plus GST per month. This includes 6 to 12 users and includes 10GB of file storage. A charge will apply for any data stored above the 10GB limit (\$20 plus GST per additional 10GB allocation of file storage).

c.. Large account - A License Fee of \$129 plus GST per month. This includes 13 to 25 users and includes 15GB of file storage. A charge will apply for any data stored above the 15GB limit (\$20 plus GST per additional 10GB allocation of file storage).

d.. Enterprise account – Contact us for License Fee information per month. This includes 26+ users and includes unlimited file storage.

2. If the Licensee has acquired the Software from a third-party reseller, the License Fee is payable to that reseller. In all other cases, the License Fee is payable direct to the Licensor.

3. The Licensee will provide valid and current credit card details to the Licensor and hereby duly authorises the Licensor to debit their credit card for any monies due to the Licensor (including the monthly License Fees payable).

4. If a License Fee payment is overdue, the Licensor may suspend the Licensee's access to the Software.

4. Licensee's Undertakings

1. The Licensee must:

a.. not copy, modify or distribute the Software nor to communicate it to any third party without the Licensor's prior written consent;

b.. not reverse assemble, reverse compile, otherwise translate or reverse engineer the Software except if expressly permitted by law. If decompilation of the Software is permitted under the Copyright Act 1994, the Licensee must first contact the Licensor who will use its reasonable endeavours to make a suitable version of the Software available for that decompilation subject to such reasonable terms as the Licensor requires;

c.. supervise and control the use of the Software in accordance with this agreement;

d.. not make the Software available (including program listings, object and source program listings, object code and source code) in any form to any person without the prior written consent of the Licensor;

e.. allow access to its premises and premises under its control if the Licensor acting reasonably, notifies the Licensee that the Licensor wishes to audit the Licensee's use of the Software; and

f.. provide regular feedback to the Licensor regarding the Software and allow the Licensor access to the Licensee's data for the purpose of evaluating the Software.

5. User Roles

1. The Licensor grants you the right to access and use the Software with the particular user roles available to you according to your subscription type. This right is non-exclusive, non-transferable, and limited by and subject to this agreement. You acknowledge and agree that:

a.. you determine who is an invited user and what level of user role access the invited user has;

b.. you are responsible for all invited users' use of the Software;

c.. you control each invited user's level of access at all times and can revoke or change an invited user's access, or level of access, at any time and for any reason, in which case that person or entity will cease to be an invited user or will have a different level of access, as the case may be; and

d.. if there is any dispute between you and an invited user regarding access to the Software, you shall decide what access or level of access to the relevant data that invited user shall have, if any.

6. Protection of Passwords

1. You must ensure that all usernames and passwords required to access the Software are kept secure and confidential. You must immediately notify the Licensor of any unauthorised use of your passwords or any other breach of security. The Licensor will then reset your password. You must also take all other actions that the Licensor reasonably deems necessary to maintain or enhance the security of the Licensor's computing systems and networks and your access to the Software.

7. Limitation of Liability

1. The Licensor is not liable to the Licensee for any loss or damage arising directly or indirectly in connection with this agreement, the Software, its use, misuse or otherwise including (but without limitation) any loss of profit, business, revenue, data, goodwill or anticipated savings. This exclusion of liability applies to liability in contract and tort. If the Licensee is acquiring the Software for business purposes, the Consumer Guarantees Act 1993 does not apply, but otherwise this clause 7.1 does not affect any of the Licensee's rights under that Act or under any other law.

2. The Licensor excludes all other representations and warranties, whether express or implied, in relation to the Software or the Licensee's use of it, except where the Licensor is precluded by law from doing so.

3. The Licensor does not provide any warranty in relation to the ability to transfer data to a third-party product at the end of the license period. Data will only be provided in plain text format.

4. The Licensor gives no warranty that:

- a.. the Software will meet the Licensee's requirements;
- b.. the service will be uninterrupted, timely, secure or error free;
- c.. the results that may be obtained from the use of the Software will be accurate or reliable;
- d.. the quality of any products, services, information or other material purchased or obtained by the Licensee from the Licensor will meet the Licensee's expectations; or
- e.. any errors in the Software will be corrected.

5. Any material downloaded or otherwise obtained through the use of the Software is done at the Licensee's own discretion and risk and the Licensee is solely responsible for any damage to the Licensee's computer system or loss of data that results from the download of any such material. No advice or information, whether oral or written, obtained by the Licensee from the Licensor will create any warranty not expressly stated in this agreement.

6. In the event that any limitation or provision contained in this agreement is invalid for any reason and the Licensor becomes liable for loss or damage that would otherwise have been excluded, or in any other circumstances, the liability of the Licensor is limited to a maximum aggregate for all claims of \$5,000.00.

8. Intellectual Property – Confidentiality

1. All intellectual property rights, including copyright and trademarks relating to the Software are and remain the sole property of [Holding Company Name]. The Licensee:

- a.. agrees to keep such intellectual property rights confidential to the extent that they are not public knowledge; and
- b.. agrees that it will not during or at any time after the termination of this agreement in any way dispute the ownership by the Licensor of any of those rights.

2. Any modifications of or updates to the Software, whether suggested or carried out by the Licensor, Licensee or any other person, become and remain the property of the Licensor.

9. Your Data – Back-up Obligation

1. Title to, and all intellectual property rights in, your data remain your property. However, your access to the data is contingent on full payment of all monies due to the Licensor being paid when due. You grant the Licensor a license to use, copy, transmit, store, and back-up your information and data for the purposes of enabling you to access and use the Software and for any other purpose related to provision of the Software services.

2. You must maintain copies of all data inputted. The Licensor adheres to its best practice policies and procedures to prevent data loss, including a daily system data back-up regime, but does not make any guarantees that there will be no loss of data. The Licensor expressly excludes liability for any loss of data, no matter how this loss is caused.

3. If you enable third-party applications, you acknowledge that the Licensor may allow the providers of those third-party applications to access your data as required for the interoperation of such third-party applications with the Software. The Licensor is not responsible for any disclosure, modification or deletion of your data resulting from access by third-party providers.

10. Remedies and Indemnity

1. The Licensee indemnifies the Licensor against all losses, damages, expenses and legal costs (on a solicitor/client basis) that the Licensor may sustain or incur as a result, whether directly or indirectly, of any breach of this agreement by the Licensee.

2. The Licensee agrees to protect and fully compensate the Licensor from any and all third party claims, liability, damages, expenses and costs (including, but not limited to, reasonable solicitor/client costs) caused by or arising from the Licensee's use of the Software, the Licensee's violation of this agreement, or infringement by any other user of the Licensee's account, of any intellectual property or other right of anyone.

3. The Licensee must pay to the Licensor interest at the rate of 15% per annum on any payment due under this agreement, which is not paid by the due date, from such due date up until the actual date of payment.

11. Variation

1. The terms of this agreement may be varied by the Licensor posting new terms on its website. The new terms shall be binding upon the Licensee two months after they have been posted on the website.

12. No Agency

1. The Licensee acknowledges that any third party consultant, for example an accountant, is not an agent of the Licensor. The Licensor therefore accepts no liability for the actions of such third parties.

13. Termination

1. Either party may terminate this agreement by 30 days' prior written notice to the other party.

2. The Licensor will not be liable to the Licensee for any loss or damage the Licensee suffers because the Licensor has exercised its right under this clause.

3. On termination of this license, the Licensee must immediately delete the Software from the Licensee's system and return any copies of the Software that are held.

14. No Assignment

1. The Licensee must not assign or otherwise transfer in whole or in part any of its rights or obligations under this agreement.

15. Dispute Resolution

1. In the event of any dispute arising between the parties, the matter must be dealt with by discussion between the managing director or other relevant controlling officers or managers of those parties on a without prejudice basis, such discussion to be with the assistance of a mediator appointed by the president of the New Zealand Law Society with the objective of reaching an acceptable commercial resolution to the dispute. The costs of such mediation are to be shared equally between the parties.

2. If the mediation is unable to resolve the dispute the matter may be referred by either party to arbitration.

16. Privacy

1. The Licensor's privacy policy sets out the parties' obligations in respect of personal information. The policy is posted on our website [include URL]. Please read this policy. You will be taken to have accepted this policy when you accept these terms.

17. General

1. If any provision of this agreement shall be invalid, void, illegal or unenforceable the validity and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

2. This agreement shall be governed by the laws of New Zealand and is subject to the jurisdiction of the courts of New Zealand.

3. The Licensee shall not be entitled to set off against or deduct from the License Fee any sums owed or claimed to be owed to the Licensee by the Licensor.

4. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.

5. The failure by the Licensor to enforce any provision of this agreement shall not be treated as a waiver of that provision, nor shall it affect the Licensor's right to subsequently enforce that provision.

18. Online Credit Card Direct Debit Terms and Conditions

1. The following terms and conditions relate to the Licensee's credit card direct debit authority and set out the Licensee's rights, the Licensor's commitment to the Licensee, the Licensee's responsibilities to the Licensor and where the Licensee should go for assistance. These terms and conditions are in addition to the terms and conditions of any existing contract/s with the Licensor or the terms and conditions associated with the products and services that relate to the Licensee's direct debit authority.

2. By selecting the direct debit from credit card payment method either online or by completing a Direct Debit Authority Form the Licensee:

- a.. acknowledges that the Licensee is authorised to establish this direct debit authority;
- b.. understands and accepts the Licensee's commitments and responsibilities under the credit card direct debit terms and conditions set out below; and
- c.. authorises the Licensor to charge the Licensee's nominated credit card for both periodic payments for all contracts and/or products and services with recurring charges; and one-off payments where credit card has been selected as the payment method.

3. The Licensor will arrange for funds to be debited from the Licensee's nominated credit card, as authorised by the Licensee, on the direct debit date shown on the Licensee's invoices.
4. A tax invoice confirming the amount of the payment will be issued to the Licensee within one to three working days of:
 - a.. periodic payments – the start of a month in which a payment will be made by the Licensee;
and
 - b.. one-off payments – the Licensee's order being accepted and processed.
5. The Licensee will advise of any changes to the direct debit arrangements at least 14 days in advance.
6. It is the Licensee's responsibility to ensure that the Licensee has sufficient funds available to cover the Licensee's payments and that the Licensee's credit card details are correct.
7. In the event that a payment is declined, the Licensor will make up to two further attempts to process the payment, three days after the first or subsequent attempt.
8. Should a payment default, the Licensor will notify the Licensee by email and it is the Licensee's responsibility to organise an alternative payment, which should be received by the Licensor within five working days of the original due date.
9. Should a response not be received within the five working days allowed, the Licensor may list the Licensee's payment with a debt collection agency. Defaults are listed for a period of five years and may have an adverse effect on the Licensee's credit rating.
10. The Licensor may suspend the Licensee's account, subscription or membership (including suspending access to your data) until any outstanding payments have been made.
11. The Licensee may incur fees or charges imposed by the Licensor to cover administration fees for the collection of any defaulting payment under this agreement.
12. If the Licensee believes that there has been an error in debiting the Licensee's credit card, the Licensee should immediately contact the Licensor by telephone or email so that the Licensor can resolve the Licensee's query promptly.
13. If the Licensor concludes, as a result of the Licensor's investigations, that the Licensee's credit card has been incorrectly debited, the Licensor will advise the Licensee and arrange a refund of the amount due to the Licensee. If the Licensor concludes that the Licensee's credit card has been debited correctly, the Licensor will advise the Licensee and provide evidence of the Licensor's finding.
14. If the Licensee wishes to defer or alter any payment arrangements, stop an individual payment item or cancel a payment authority, the Licensee must contact the Licensor by telephone or email.
15. The Licensee acknowledges and agrees that the Licensor will need to provide information to the Licensor's financial institution to initiate or alter payment arrangements from the Licensee's credit card or to investigate an alleged incorrect or wrongful payment.
16. This authority permits the Licensor to change the amount debited from the Licensee's credit card, with at least 14 days' notice, to reflect any change to prices for the products and/or services that relate to the Licensee's direct debit authority. It also permits the Licensor to change the amount debited or charged to cover any increases in amounts payable arising from the purchase of additional products by the Licensee from time to time, with at least 14 days' notice.