



# Smartly

# Software Terms of Use

## Introduction

Welcome to Smartly! We're thrilled to help you simplify your payroll and people admin! Before you start using Smartly, please read through and accept our Terms of Use.

These terms apply from when you first open a Smartly account (including any trial period) and continue until your Smartly account ends.

We may occasionally update these terms. If we do, changes will only apply going forward and we'll make every effort to let you know. Generally, we aim to provide you with 30 days' notice of important changes before they become effective, unless we need to make immediate changes for reasons, we don't have control over. If a change is minor, we may not notify you. Your continued use of Smartly after any changes will mean that you have accepted the updated terms.

We've used headings for key topics to make reading the terms easier for you.

Once you've read through the terms, if you have any questions or concerns, please call us on 0800 10 10 38. We're happy to help!

## Use of Smartly

In exchange for paying the applicable charges and complying with these terms, we give you a limited, non-exclusive licence for Authorised Users to use Smartly. This licence is personal to you and not transferable to others.

Smartly uses software owned by Datacom and we have the right to provide a licence to you.

You may use the software but must not attempt to copy, adapt, or download it, or bypass any security features or mechanisms.

Smartly must be used in accordance with any applicable law.

Smartly is hosted on a cloud platform which is appropriately backed-up.

Smartly should be available at all times, except for when maintenance or service improvements are planned.

When possible, we will let you know in advance if Smartly will not be available for an extended period. An example of when this may not be possible, is if we need to temporarily suspend access in an emergency.

We will use our best efforts to restore Smartly as soon as possible if there is an interruption.

## Payroll Processing and Deductions

Smartly's payroll software is designed to be flexible to meet your needs. You can choose the Smartly plan and level of service that suits you: Our full service includes PAYE handling and, depending on who you bank with, Smartly can also automate payments to your employees. If you prefer, you can handle your own PAYE whilst we take care of paying your employees; or you can simply use Smartly to calculate your

payroll and handle all the payments yourself. You can choose the Smartly payroll plan that suits you best and includes the features and functionality that are important to you. We'll go through your options with you and agree what works best for you to get you started, but you can make changes at any time, just let us know.

To get the most from Smartly we recommend you appoint us as your authorised Inland Revenue intermediary for handling PAYE, other approved employee wage or salary deductions, and the related payday filing obligations. If you have not appointed us as PAYE intermediary, the relevant terms below which relate to PAYE deductions and filing do not apply to you.

If you are using Smartly as a calculator but making payments yourself, the terms below which relate to payment processing do not apply to you.

In any case, we are not your tax agent, or any other agent for any other purpose.

- You authorise us to provide your payroll reporting information required by law to Inland Revenue when required.
- You authorise us to provide payslips and other reports required by your Authorised Users and your employees for each pay run.
- You authorise us to make all relevant payroll deductions of any kind (for example PAYE, KiwiSaver, child support, student loans, fines or attachments), other agreed expenses (for example union fees, health insurance premiums), and (unless we have agreed to invoice you) our payroll processing fees applicable to your employees paid using Smartly. You need to have told us what these other agreed expenses are.
- Each pay run that you use Smartly, Smartly will automatically create one electronic file for your employees' net pay to be direct credited to their nominated bank accounts and another file to direct credit all applicable deductions. If we are your authorised PAYE intermediary, Smartly will debit your nominated account and deductions will be paid into a Smartly-managed trust account. The file containing employees' net pay will either be sent to you or, if we are handling your banking, to the banking interchange system and in that case Smartly will debit your nominated account with the net pay amount.
- We undertake to pay all deductions that we receive, and to send required reporting, to Inland Revenue or to relevant third parties on or before the due date for payment. We will not be liable to account to Inland Revenue or any third party for any deductions not received into our trust account, or subsequently dishonoured, or be liable for any late payment penalties, bank fees or other resulting loss.
- We will administer the trust account with due care and ensure that funds held in our trust on your behalf are properly accounted for. All interest earned on trust account funds belongs to us.
- These terms do not create any obligation on our part to any of your employees.
- We are not liable for any of your tax or other obligations to Inland Revenue except for any payment and reporting obligations set out above (if applicable).

## People Management

- People Management is available as an add-on to your Smartly payroll product. They work together to allow you to manage your payroll and people admin all in one system. People Management is not available without a current Smartly subscription.
- People Management is not intended to provide you with professional advice. Smartly may produce, collate, or share information, templates and tools that we think may assist you in managing your people for you to use at your own risk. These are not a substitute for professional or legal advice, and, to the extent permitted by law, we will not be liable to you in relation to any loss resulting directly or indirectly from your use of the resources and information provided.

- If you sign up to People Management and then choose to cancel People Management later, we will store your data for six months. You can access this data by reactivating your People Management subscription or by requesting it in writing. Cancelling your Smartly payroll account will also automatically cancel People Management as this product is not available without a Smartly payroll account. We recommend downloading all required data before cancelling your subscription. We will not be liable for any losses incurred directly or indirectly from the loss of access to your data after you cancel.

## Charges

Charges vary depending on your Smartly plan and are comprised of a base fee; a variable amount depending on the number of employees you pay using Smartly and the number of pay runs you process; and may also include a variable amount depending on the number of employees you pay using Smartly who have access to self-service features. Smartly's People Management module is an optional add-on and comes at an additional cost.

We will begin billing the monthly base fee as soon as you submit the sign-up form.

You must reimburse us for any bank charges that we incur on your behalf, for example if your employees' salaries or wages are direct credited, or if any payment is declined. As a result, actual charges may vary from month to month.

All charges are in New Zealand Dollars and exclude GST.

We may review the charges occasionally and will give you at least one month's notice of any changes.

If we agreed a set-up fee with you, this will be invoiced when your account goes live and must be paid in full by direct credit to our nominated bank account within seven days of our invoice.

All charges will be invoiced monthly, at the end of each month. All payments must be made in full without set off or deduction.

If you are paying by direct debit, you must provide and keep in place a direct debit authority allowing us to debit the monthly charges set out in the invoice from your nominated bank account on or around the 15th day of the following month. We will notify you of the amount to be debited.

If your direct debit payment fails, we will attempt a second direct debit on the 25th of that month.

You will be notified if payment fails and informed of the further attempt to debit payment.

If you are paying by direct credit, you will need to pay Smartly's monthly invoice by the 15th day of the following month.

## Your Responsibilities

You are responsible for complying with these terms, all applicable laws, the requirements of tax authorities and the policies and procedures of your bank.

You confirm that each of your Authorised Users has permission to use Smartly on behalf of your business.

All Authorised Users must choose and keep safe a strong password and not share it with anyone. We recommend that passwords are changed regularly.

You are responsible for managing Authorised User access and updating access permissions as required.

You are responsible for ensuring your contact email address listed in Smartly is correct and updated as required.

You must notify us if you suspect any breach of the security, confidentiality, or integrity of your data. For your protection, we may temporarily suspend your account access.

You must notify us if you receive a notice from any tax or regulatory authority concerning your payroll processing.

You must ensure that your nominated bank account holds enough cleared funds to cover the total combined amount to be paid or deducted at the payroll processing cut-off time of each pay run. We are not responsible if your bank declines any payment for any reason or charges additional fees. You remain solely responsible and liable for dealing directly with the Inland Revenue and complying with your tax and other obligations except for our payment and reporting obligations (where applicable).

## Confidentiality and Privacy

We will use reasonable safeguards to protect and maintain the confidentiality of any files and electronic data stored by us on your behalf, designed to prevent any unauthorised use, access, deletion, alteration, or disclosure of data. We will notify you if we suspect any breach of the security, confidentiality, or integrity of your data.

We will comply with all applicable privacy laws and regulations and with our privacy policy published on our website at [www.Smartly.co.nz/privacy](http://www.Smartly.co.nz/privacy)

All customer information is stored on cloud storage or at secure premises using industry standard security protocols. As a user of cloud services, Smartly may store customer information on servers located in several countries outside of where you reside or where services are provided to you. We take reasonable steps to help ensure your privacy is protected, in accordance with the relevant privacy and data protection laws, by using a variety of lawful data transfer mechanisms and contractual agreements for privacy and data protection.

In line with our Customer Data Retention and Protection policy, we only retain customer information for as long as required by applicable law or as needed for our services. At the end of the designated retention period, customer data is securely removed from our systems in compliance with all applicable legal and regulatory requirements.

## Cancelling your Smartly account

You may cancel your Smartly account at any time by letting us know. We will begin our cancellation process when we receive a written cancellation request from your main contact.

Your account will be officially closed on the last day of the calendar month in which your cancellation request is processed unless you have specified a later date, and you will be invoiced accordingly. After your account is closed, you will no longer be able to process payroll or access People Management.

We will invoice you for your final pay runs as normal. You must pay all charges incurred up to the closure of your account.

You can continue to log into your account to access or download historical payroll information during the applicable period stated in our Customer Data Retention and Protection Policy. If we intend to stop providing storage and access, we will do our best to contact you to let you know so that you can download your records before we delete them.

Cancelling your Smartly payroll account will also automatically cancel your People Management module as this product is not available without a Smartly payroll account.

We may temporarily suspend your account access or cancel your account if we reasonably believe that you are in breach of these terms, including failing to pay any charges or if you commit or suffer any insolvency event (bankruptcy, insolvency, liquidation, receivership, official management or similar), or in our reasonable opinion you are likely to be unable to meet your payments or other obligations owed to us.

In addition to and without prejudice to our other remedies, if any amount payable by you to us is overdue: we may charge you interest on the amount due (calculated on a daily basis from the due date) at a rate equivalent to Smartly's applicable bank overdraft rate plus 3%; all amounts outstanding with us for services we have provided to you will immediately become due and payable; and/or you will indemnify us against any recovery costs we incur due to your actions.

Except if a serious breach has occurred, we will contact you first to let you know the action we intend to take.

If we intend to stop offering Smartly in New Zealand we will give you at least six months' notice.

## Disclaimers

- Smartly's payroll software is designed to meet the normal payroll processing requirements for organisations in New Zealand, including payroll reports required by tax authorities.
- We continue to develop the product in response to changes in the law or new interpretations of the law, and in response to new employment arrangements identified among users of Smartly.
- Though we want to provide a great service, there are certain things we can't promise:
- We do not guarantee that Smartly will be free from errors or bugs.
  - o We will assist you if you have any questions and we commit to use our best efforts to correct any errors or bugs in the software.
- Only you can determine whether the functionality of Smartly is appropriate for your business.
- We confirm that Smartly will operate as described on our website, but otherwise we do not provide any warranty of performance, availability, suitability or otherwise.
- You accept that we are not providing any legal, tax or other professional advice and that you must rely solely on your own advice.
- Except to the extent that we cannot legally exclude or limit our liability, we will not be liable for more than the total amount you have paid to us in the twelve months before the date of your claim.
- We will not be liable for any indirect or consequential loss, including loss of profit, revenue, savings, or opportunity.
- You may not bring any claim under these terms more than two years after the date on which such claim arose.

## General

New Zealand law applies to these terms, which set out the complete agreement between us in relation to Smartly.

We will not be liable for any failure or delay in providing Smartly which is beyond our reasonable control. If either of us does not exercise any right under these terms, this does not mean that right is waived or cannot be exercised later.

We may transfer your account to another payroll provider on the same terms by giving you written notice. Any notice under these terms will be validly given if it is in writing and sent by email to the recipient's nominated email address and will be deemed received when the message enters the recipient's mail server.

## Definitions

In these terms, the following words have special meanings:

Authorised User means any person approved by you to access and Use Smartly.

Cleared funds means that the money in your bank account can be immediately withdrawn or used to make payments.

Customer (or you/your) means the organisation or person subscribing to Smartly to whom we will address our invoices.

Inland Revenue means New Zealand Inland Revenue | Te Tari Taake.

Smartly (or we/our/us) means Smartly Limited (New Zealand Business number 9429035276685) and the cloud-hosted payroll processing software and related services which we provide.

Terms of Use or terms means the terms and conditions contained in this document, together with our privacy policy, in each case as amended occasionally.

Use means remote access to the Smartly service by Authorised Users and the ability to input and process payroll and people data.