



PAVILION TERMS AND CONDITIONS OF SALE & SERVICE

1 Definitions

- a) "Order" means the attached Quotation accepted by Customer together with these Terms and Conditions.
- b) "Product" means the services specifically contracted for by Customer in the Order.
- c) "User Licence" means the software licence grant and licence terms referred to herein for each Product. Each Software Licence has a corresponding Licence Fee.
- d) "Specifications" means the specification of each Product.
- e) "Support" means software updates and maintenance; training; and other standard support services provided by Pavilion.
- f) "Pavilion" means the entity issuing the Quotation.
- g) "Customer" means the entity to which the attached Quotation is addressed.
- h) "Products" means the products specifically contracted for by Customer in the Order.

2 Orders

- a) Pavilion warrants that Products will materially conform to Specifications for a period of 90 days from the Acceptance Date. Pavilion does not warrant that Software will operate in hardware and software combinations selected by Customer, or meet requirements specified by Customer.
- c) Pavilion does not warrant that the operation of Products will be uninterrupted or error free.
- d) If Pavilion receives notice of material non-conformance to Specifications during the warranty period, Pavilion will, at its option, repair or replace the affected Products. If Pavilion is unable, within a reasonable time, to repair, replace or correct a defect or non-conformance in a Product to a condition as warranted, Customer will be entitled to a refund of the purchase price upon prompt return of the Product to Pavilion.
- e) Pavilion warrants that the Services will be performed with reasonable care and skill and consistent with generally accepted industry practices. Pavilion will rectify any defect in the Services, which is reported within 14 days of completion, and if Pavilion fails to do so, Customer shall be entitled to be reimbursed the charges payable in respect of the defective Services.
- f) The above warranties do not apply to defects resulting from: improper or inadequate maintenance by Customer; Customer or third party supplied software, interfacing or supplies; unauthorized modification; improper use or operation outside of the Specifications for the Product; abuse, negligence, accident, loss or damage in transit; improper site preparation; or unauthorised maintenance or repair.
- g) Except as expressly stated in these conditions all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded so far as permitted by law and the remedies provided shall be Customer's sole and exclusive remedies for breach of warranty.

3 Delivery Period

- a) Pavilion will make reasonable efforts to meet any date specified for delivery of Products and provision of Services. Save for payment by the Customer to Pavilion, time will not be of the essence in the Order.
- b) If the Order specifies that the Services (e.g. training or consultancy) will be provided at a date to be notified by the Customer within a specified period, Customer must give at least 14 days' notice before the period expires. The Services will be provided or commenced on the date notified, or other agreed convenient date. If the Customer fails to notify a date, the order will be deemed to have been cancelled and Customer will incur the maximum cancellation charge in accordance with Condition 7 below.

4 Statement of Work

Except where services are provided under the Order on a time and materials basis the following provisions shall apply where the Order specifies a fixed price for Services deliverables:

- a) The work is described in the Order together with any documents specifically referred to therein. Any changes to the work will be the subject of an Order amendment signed by both parties.
- b) The Order will specify what constitutes completion of the work and the items to be delivered to Customer. Acceptance will occur if the delivered items materially meet the description of the work. In the event that minor items require rectification, the work will be deemed to be accepted subject to OLM's undertaking to commence work on completing outstanding items within 14 days of inspection.
- c) If the Work includes software development, Pavilion's Software Development Terms will apply.

5 Charges and Payment

- a) The charges payable for Services are as stated in the Order. Any additional licences or services required will subject to a further order. If at any time the product or services are subject to VAT, this will be invoiced to and paid by the Customer in addition.
- b) Payment is due 30 days from Pavilion's invoice date. Invoices will be issued as and when stated in the Order.
- c) Pavilion may discontinue service if Customer defaults in payment of any sum due under the Order or any other agreement with Pavilion if, after 10 days written notice, the default continues.
- d) Pavilion will not be obliged to perform any Services unless payment has been made in advance. Invoices for Support Services will be issued in advance of the Support period.

6 Warranty

- a) Unless otherwise provided, the Licensor warrants that the Licensed Work is substantially in accordance with the Documentation or in the Licensor's or the Products owner's product description documentation. The Licensor does not warrant that the Licensed Work will meet the Licensee's requirements or that the Licensed Works will be Error free.
- b) The Licensee acknowledges that the Licensed Work has not been prepared to meet the Licensee's individual requirements and that it is the Licensee's responsibility to ensure that the Licensed Work meets the Licensee's requirements.
- c) The Licensor shall not be liable for any failure of Product to provide any facility or function not described in the Documentation referred to in Condition 10.1.
- d) The Licensee's sole and exclusive remedy under the 90-day warranty given in this Condition shall be limited to the correction or replacement of the Licensed Work in whole or in part during the period of one year from the commencement of this Licence Agreement.



7 Licences

- a) The Licensee will nominate from time to time a responsible person to control access to and distribution of the Licensed Work in accordance with the provisions of the Licence
- b) The Licensed Work may be accessed and used by any employee, or other person authorised by the Licensee for the purposes of the normal business of the Licensee's organisation at any Site. For academic institutions this may include students.

General exclusions:

- c) No persons shall be excluded from access and use of the Licensed Work for reasons of nationality or citizenship.
- d) The Licensee shall use reasonable endeavours to satisfy itself that all Users are authorised by the Licensee for the purposes of the normal business of the Licensee's organisation
- e) The Licensee will nominate from time to time suitably competent persons to act as technical contacts by and through whom all technical enquiries, support and information requests will be made by the Licensee.

8 Confidentiality

- a) The Licensee hereby acknowledges that the Licensed Work contains confidential information of the Licensor or of third parties. The Licensee undertakes to keep confidential the Licensed Work and save for access permitted to Users pursuant to the Licence shall not divulge the Licensed Work to any third party without the prior written consent of the Licensor.
- b) The Licensor and Licensee shall keep confidential the contents of this Licence and all information of the other party designated as confidential and obtained under or in connection with the Licence and shall not divulge the same to any third party without the prior written consent of the disclosing party unless disclosure is required by applicable law or by a court of competent jurisdiction;
- c) The Licensor and Licensee may divulge confidential information of the other party only to those employees, agents or subcontractors bound under equivalent conditions of confidence who are directly involved in the use of Product, and shall ensure that such persons are aware of and undertake to comply with these obligations of confidentiality.
- d) The provisions of this Condition 8 shall not apply to any information which:
- di) is or becomes public knowledge other than by breach of this Condition;
- dii) is in the possession of the receiving party without restriction before the date of receipt from the disclosing party;
- diii) is obtained from a third party who is lawfully authorised to disclose the same;
- div) is independently created or generated without breach of the Licence.
- e) The obligations of the parties as to disclosure and confidentiality shall continue in force notwithstanding the termination of the Licence for any reason whatsoever.
- f) The licensor agrees to use the email addresses supplied by the licensee exclusively to deliver access to the products, and will not transfer or copy those email addresses into any other system, or use the email addresses for any mailings other than the products.

9 Training and Other Services

Training and other Services will be provided on the dates and times specified in the Order, if any. If Customer gives notice to postpone or cancel all or part of such Services, Pavilion may invoice customer a proportion of the charges for the affected Service as per the termination clause.

10 Limitation of Liability and Remedies

- a) To the extent Pavilion is held legally liable to Customer, Pavilion's total liability is limited to the amount actually paid by Customer to Pavilion in the Order. Customer acknowledges that this limitation is reasonable and that the fees payable to Pavilion under the Order have been based on this limitation; damages for personal injury; direct damage to tangible property up to a limit of £5m; other direct damages arising out of the Order, up to a limit of the amount paid or payable to Pavilion for the Products or Services In respect of which the claim arises.
- b) In no event will Pavilion be liable for, indirect or consequential damages or loss of profits or loss of revenue, or damages for loss of data or software restoration.
- c) Notwithstanding anything else in these Terms and Conditions Pavilion's liability for personal injury or death caused by Pavilion's negligence, and for fraudulent misrepresentation shall not be limited.

11 Change Requests

Customer's request for any change in Services must be in writing; where Pavilion wishes to provide any requested changes in Services Pavilion will respond to a request for change within 14 days with a quotation, which Customer may accept subject to these Terms and Conditions of Service. The quotation will state the effect on charges, delivery and other aspects of Services. Upon acceptance by Customer the accepted quotation will become an Order.

12 Cooperation

Customers will provide all necessary access to its premises, and relevant information and data in order to provide the service and training to all relevant users. Pavilion will nominate an authorised representative as the contact point for the Customer.

13 Intellectual Property

Unless the Order states otherwise, all intellectual property rights in any work products arising from the Services will be the sole property of Pavilion. Customer shall be entitled to exercise any such rights for its own internal purposes only.

14 Intellectual Property Rights and Indemnity

- a) OLM will defend or settle any claim against Customer that Pavilion Products or Support delivered under the Order infringe a patent, copyright, trade secret, or trademark in the United Kingdom, provided Customer promptly notifies Pavilion in writing; and cooperates with Pavilion in, and grants Pavilion sole control of the defence or settlement.
- b) Pavilion will pay infringement claim defence costs, settlement amounts and court-awarded damages. If such a claim appears likely, Pavilion may modify the Product, procure any necessary licence, or replace it. If Pavilion determines that none of these alternatives is reasonably available, Pavilion will refund Customer's purchase price upon return of the Product if within one year of Delivery, or the Product's net book value thereafter.
- c) Pavilion has no obligation for any claim of Infringement arising from Product modifications by Customer or a third party or Product use in breach of licence terms.
- d) These terms state Pavilion's entire liability for claims of intellectual property infringement.

15 Termination

- a) Either party may terminate this Licence by written notice to the other if the other party is in breach of its obligations under the Licence, and in the event of a breach capable of being remedied, fails to remedy the breach within thirty days of receipt of notice in writing specifying the nature of the breach
- b) To end the contract 3 months' notice in writing should be given before the end of the annual licence period unless there is a breach as in 15a). Once accepted no refund will be given against the annual fee.

16 General

- a) Pavilion will not be liable for performance delays or for non-performance, due to causes beyond its reasonable control.
- b) Customer may not assign any rights or obligations hereunder without prior written consent from Pavilion.
- c) Disputes arising in connection with the Order will be governed by the laws of England or Scotland (whichever is the country in which Customer's address is located)
- d) The Order constitutes the entire agreement between Pavilion and Customer, and supersedes any previous communications, representations or agreements between the parties, whether oral or written, regarding the transactions hereunder. Customer's additional or different terms and conditions will not apply. The Order may not be changed except by an amendment signed by an authorised representative of each party.
- e) Pavilion may assign, sub-contract or deal with any of its rights or obligations under the Order.
- f) This quote is valid for 30 days unless otherwise stated