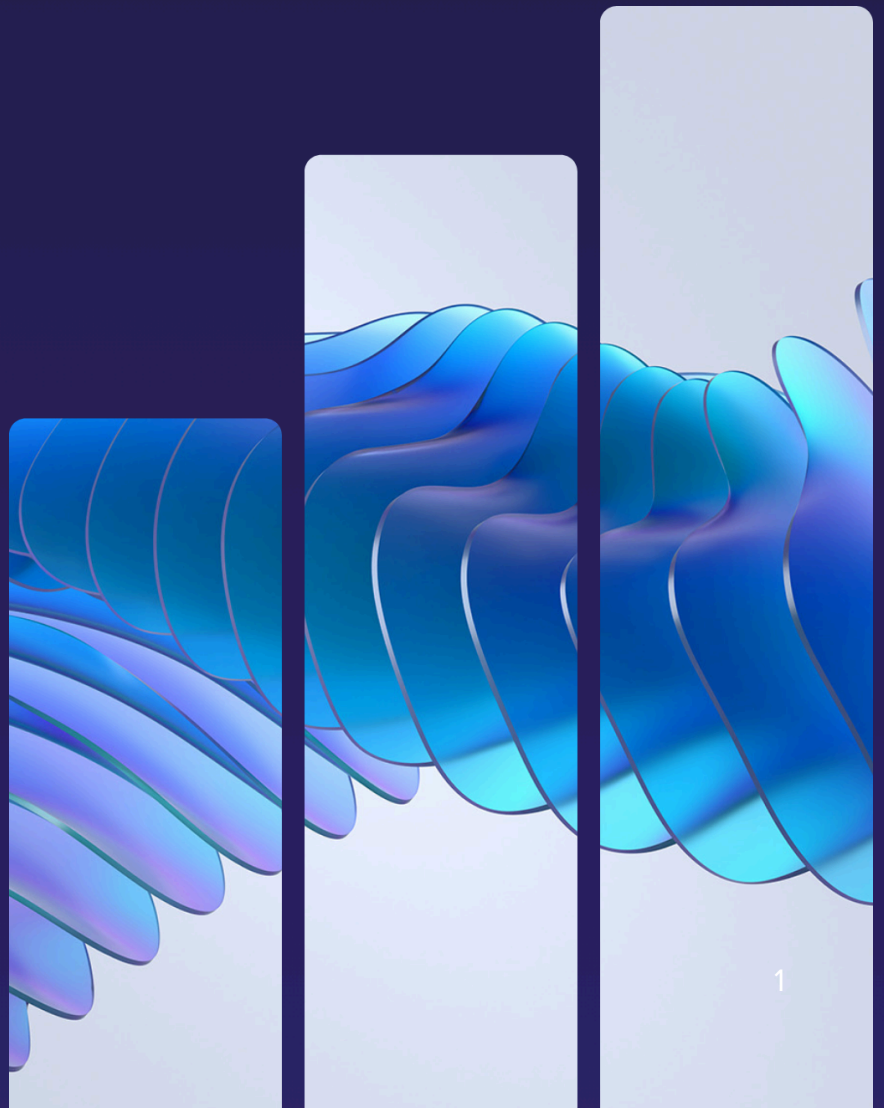# The Virtual Forge

Terms & Conditions

Terms & Conditions

The Virtual Forge Limited, Studio 1, The Glove Factory, Brook Lane, Holt, Trowbridge, England, BA14 6RL

1. Definitions and interpretation

1.1 Definitions

In these terms:

"Customer" means a person to whom the Supplier's quotation or acknowledgement of order is addressed or with which the Supplier has made or wishes to make an agreement for the supply of goods, software or services;

"Deliverables" means Goods, Software or Services or any combination of any of them;

"Goods" means any goods agreed to be supplied by the Supplier to the Customer including any physical media on which any Software is stored;

"Licence Agreement" is defined in paragraph 2.2;

"List Price" means the price shown in the lists, catalogues or other publications published in paper or electronic form by the Supplier or on any Web page of the Supplier;

"Loss" means any loss, damage, liability, cost, charge or expense (including any costs of recovery);

"Product Warranty" is defined in paragraph 12.3;

"Services" means any services agreed to be carried out by the Supplier (for example, configuration services) for the Customer;

"Supplier" means Virtual Forge Limited; and

"Warranty Period" means the manufacturer's specific warranty period for the Software/Goods as set out in the relevant Licence Agreement/Product Warranty (as applicable).

1.2 Interpretation

In these terms:

  (a) reference to:

      (i)   any statute or statutory provision includes a reference to it as from time to time consolidated, modified, re-enacted (with or without modification) or replaced;

(ii)   a person includes all forms of legal entity including an individual, company, unincorporated association, governmental entity and a partnership;

(b) the words "other", "otherwise", "include", "including" and "in particular" are not to be construed so as to limit the generality of any words preceding them;

(c) the paragraph headings are to be ignored in construing these terms.

2. General

2.1 These terms of supply are, unless otherwise expressly agreed in writing between the Customer and the Supplier, the only terms upon which the Supplier is willing to supply Deliverables.

2.2 Supplier is not the creator or developer of any Software. Therefore, if the Supplier has agreed to supply Software, these terms shall be in addition to a separate licence agreement provided by the licensor of the relevant Software to the Customer (the "Licence Agreement"). The Customer agrees that the supply, licence and use of any Software will be subject to the terms of any relevant Licence Agreement.

2.3 If the Supplier has agreed additional terms in relation to any Services, these terms shall be subject to such separate service terms.

2.4 Acceptance of these terms of supply by the Customer may be given in writing or by conduct and will in any event occur on acceptance by the Customer of any Deliverables. No variation to or qualification of these terms shall be valid unless expressly agreed in writing by the Supplier. No terms endorsed upon, delivered with or contained in the Customer's purchase order, confirmation of order or other document shall form part of the agreement between the Customer and the Supplier unless expressly agreed in writing by the Supplier.

2.5 All quotations and tenders by the Supplier (which shall be valid only for the period stated or, if no period is stated, for 30 days after their date of issue) are given without commitment.

3. Price

3.1 The price for a Deliverable shall, unless otherwise agreed by the Supplier in writing, be the List Price last published by the Supplier before the date on which the order for that Deliverable is placed.

3.2 If any delivery or supply of the Deliverables is delayed at the Customer's request or as a result of the Customer's default, the Supplier may amend the price of the Deliverables to the List Price current at the date of actual delivery or supply.

3.3 Unless otherwise stated by the Supplier in writing, prices quoted by the Supplier do not include value added tax or any other tax or duty or the cost of packaging, packing, delivery or insurance all of which shall be paid by the Customer at the time when payment of the price for the Deliverable is due.

4. Payment

4.1 The Customer must make payment for a Deliverable in sterling before its supply or delivery or, where credit terms have been agreed, within 30 days of the date of the Supplier's invoice for the Deliverable. If any payments are payable by instalments, all unpaid instalments will become immediately due if there is default in the payment of any instalment. If any amount is not paid by the Customer when due, the Customer shall pay interest on the unpaid amount at 1% per month (or part of a month) calculated on a daily basis both before and after judgement.

4.2 Time for payment is of the essence. A failure by the Customer to make due payment to the Supplier in relation to any Deliverable will entitle the Supplier:

  (a) to treat the agreement for supply of that Deliverable and any other Deliverables as repudiated;
  (b) to suspend all deliveries to the Customer pending payment in full of all sums outstanding, including any amounts not then due;
  (c) to re-sell any of the Goods and/or Software in its possession; and
  (d) to be indemnified by the Customer for any resulting Loss.

5. Payment

5.1 Any date specified or agreed for the delivery or supply of the Deliverables is an estimate only and time shall not be of the essence. If no date is specified or agreed, the Supplier shall deliver or supply the Deliverables within a reasonable time.

5.2 The Supplier shall be entitled to deliver or supply the Deliverables at one time or by instalments.

5.3 If the Customer:

(a) fails to accept Deliverables when delivered or supplied; or

(b) having agreed to collect Deliverables, fails to do so within fourteen (14) days of being asked,

then the Supplier shall be entitled to treat the agreement for supply of those Deliverables as repudiated and the Customer shall indemnify the Supplier in respect of all resulting Losses suffered or incurred by the Supplier. In that event the Supplier may (but shall not be obliged) to store all or any of the Deliverables at the risk and expense of the Customer.

5.4   If Deliverables are handed to a carrier for delivery to the Customer, the carrier will be the Customer's agent.

5.5   Any Software will be supplied in executable code form only and on any reasonable type of computer disk or other media selected by the Supplier. No installation or training services will be provided unless agreed in writing by the Supplier.

6. Ownership

6.1   Title to Goods will not pass to the Customer until the Customer has paid all monies owed to the Supplier (whether or not then due and whether or not owing in respect of the Goods supplied). Until title passes the Customer shall hold the Goods as Bailee for the Supplier.

6.2   So long as title to any Goods remains with the Supplier, the Customer shall without charge keep the Goods separate from all other goods in a way which will enable them to be readily identified as belonging to the Supplier.

6.3   If the Customer fails to pay in full for Goods, the Supplier or its representatives may enter the Customer's premises where any Goods are stored and repossess them.

6.4   The Customer shall not destroy, deface or obscure any identifying mark or packaging on Goods or Software to which the Supplier retains title.

6.5   The Supplier shall be entitled to payment for the Goods notwithstanding that it retains title to the Goods.

7.   Intellectual property and use of software

7.1   Unless agreed in writing by the Supplier, all intellectual property rights in the Software shall remain owned by the Supplier and its licensors.

7.2   Subject to paragraph 2.2, the Customer shall have a non-exclusive licence to use the Software on the following terms:

(a)   the licence shall be for any fixed period set out in the Licence Agreement or agreed in writing by the Supplier or, if no such period is agreed or set out in the Licence Agreement, the licence shall be perpetual;

(b)   if the Customer is a consumer then it may use the Software only for its own private use;

(c)   if the Customer is a business then it may use the Software only for its own internal business purposes and shall allow it to be used only by its employees and contractors;

(d)   the Customer shall use the Software subject to all the limitations (for example as to number of users or servers) stated in the Licence Agreement and if no such limitations are specified then:

(i)   for Software clearly intended for use over a network, on one server; and

(ii)   for other Software, by one user at a time;

(e)   the Customer may not copy the Software except in order for the Customer to use it in accordance with these terms (including making a reasonable number of backup copies) and may not reverse-engineer or decompile the Software, except to the extent that the Customer is allowed to do so under applicable law. Requests for interface information (to achieve interoperability) will be made to the Supplier in writing marked for the attention of the Managing Director.

8. Risk

Risk of loss of or damage to Goods shall pass to the Customer when they are delivered to the Customer or, if the Customer has agreed to collect the Goods, at the time when the Supplier notifies the Customer that they are ready for collection.

9. Quality

9.1   Subject to paragraph 2.2, the Supplier does not warrant any Software that it is error-free or that it will operate usefully or at all when not used in accordance with related user guides, or when used in a technical environment other than one approved by the Supplier.

9.2   If any Deliverables are faulty and:

(a)   the Customer gives written notice to the Supplier with full details of the problem either:

(i)   within 7 days, in the case of any exterior flaw, defect, or damage to the Goods which is reasonably apparent upon inspection; or

(ii)   within the Warranty Period (where applicable); or

(iii)   within 30 days, in any other case,

after the delivery of the Goods or Software and/or performance of the Services; and

(b)   the Customer obtains a Returned Materials Authorisation (RMA) number from the Supplier prior to returning the Deliverables; and

(c)   in the case of Goods, unless otherwise requested by the Supplier, the Customer returns them to the Supplier at the Customer's expense in their original packaging; and

(d)   in the case of Goods or Software, the Customer has not altered, repaired, interfered with or damaged them or used them in any way not permitted by these terms or in an inappropriate manner or allowed anyone else to do so; and

(e)   in the case of Goods, the Customer has followed any delivery, storage, installation, commissioning, use or maintenance instructions of the Supplier or of any manufacturer of the Goods,

then the Supplier will, at its option, either repair, remedy or replace the relevant Goods or Software and/or remedy any Services not so carried out or refund the relevant price paid by the Customer. Any Goods which are returned to the Supplier will remain at the risk of the Customer until the Supplier has agreed that they are defective.

9.3   If the Customer is a consumer and has dealt with the Supplier as such, clause 9.2 is in addition to the Customer's statutory rights and those rights are not affected by clause 9.2.

10. Non-Defective Returns

10.1   The Supplier may, at its sole discretion, accept returns of non-defective Goods which are in brand new condition and are presented in their original packaging. If the Supplier agrees to do this then it will refund the Customer seventy five percent (75%) of the price paid for the Goods. Twenty five percent (25%) of the price paid for the Goods shall be retained by the Supplier as a restocking fee.

11. Set-off

All amounts owing from the Customer to the Supplier shall be paid without any deduction or deferment on account of any dispute, cross claim or lien and without exercising any rights of set-off. No breach by the Supplier of any other contract with the Customer will affect this agreement.

12. Limitation of liability

12.1 The Supplier will not be liable, whether in contract or tort, for loss or damage suffered or incurred by the Customer in relation to any Deliverable in excess of 125% of the price paid by the Customer for the relevant Deliverable, unless the liability results from personal injury, death, liability arising under the Consumer Protection Act 1987, fraud or fraudulent misrepresentation in which case the Supplier's liability shall not be limited or excluded in any way. Nothing in this clause 11 is intended to exclude or limit the statutory rights of any Customer that deals with the Supplier as a consumer.

12.2 Subject to paragraph 12.1 the Supplier does not accept any liability under or in relation to this agreement or its subject matter (whether such liability arises due to negligence, breach of contract, misrepresentation or for any other reason) for any:
(a)   loss of profits;
(b)   loss of sales;
(c)   loss of turnover;
(d)   loss of or damage to business;
(e)   loss of or damage to reputation;
(f)   loss of contracts;

(g)   loss of customers;

(h)   loss of or loss of use of, any:

(i)   software;

(ii)   data;

(i)   loss of use of any computer or other equipment or plant;

(j)   wasted management or other staff time;

(k)   losses or liabilities under or in relation to any other contract;

(l)   indirect, special or consequential loss or damage,

and for the purposes of this clause the term "loss" includes a partial loss or reduction in value as well as a complete or total loss.

12.3 The Supplier will, if requested by the Customer, use reasonable endeavours to assign to the Customer the benefit of any product warranty relating to the quality or condition of the Goods given to it by a manufacturer of the Goods ("Product Warranty"). Where it does so, it shall have no other liability for such Goods.

13. Termination

13.1 The Supplier shall be entitled to treat the agreement for the supply of Deliverables as repudiated and (without prejudice to any of its other rights) to recover from the Customer all resulting Losses and to repossess the Goods and require destruction of all Software (in hard copy and electronic form) if the Customer fails to perform its obligations or if any of the following events occur in respect of the Customer:
   (a) a meeting of creditors generally of the Customer being held or an arrangement or composition with or for the benefit of its creditors (including a voluntary arrangement as defined in the Insolvency Act 1986) being entered into (or, in the case of an arrangement or composition, being proposed) by or in relation to the Customer;
   (b) a charge holder, receiver, administrator, administrative receiver or other similar person taking possession of or being appointed over or any distress, execution or other process being levied or enforced (and not being discharged within seven days) upon the whole or a material part of the assets of the Customer;
   (c) the Customer ceasing or threatening to cease to carry on business or being deemed to be unable to pay its debts within the meaning of section 123 Insolvency Act 1986 or admitting that it is unable to pay its debts as they fall due;

(d) a petition being presented (and not being discharged within 28 days) or a resolution being passed or an order being made for the administration or the winding-up, bankruptcy or dissolution of the Customer;

(e)   the Customer giving notice to any of its creditors that it has suspended or is about to suspend payment; or

(f) the happening in relation to the Customer of an event analogous to any of the above in any jurisdiction in which it is incorporated or resident or in which it carries on business or has assets.

14. Miscellaneous

14.1 The governing law of this agreement shall be that of England and Wales.

14.2 The courts of England and Wales shall have exclusive jurisdiction to settle any claim, dispute or issue which may arise out of or in connection with this agreement. The Customer irrevocably submits to that jurisdiction and waives any objection to it, on the ground of inconvenient forum or otherwise.

14.3 No delay, neglect or forbearance on the part of the Supplier in enforcing any term or condition of this agreement shall constitute a waiver of or otherwise affect any right of the Supplier under this agreement.

14.4 The Supplier reserves the right to defer the date of delivery or supply of the Deliverables or to cancel any order or reduce the volume of the Deliverables if it is prevented from or delayed in the carrying out of its business by circumstances beyond its reasonable control but if any such delay continues for more than ninety days, the Customer shall be entitled to terminate the agreement (to the extent that it then remains to be performed) by notice in writing to the Supplier, whereupon the Supplier shall have no further liability.

14.5 The Customer shall not be entitled to assign any of its rights under this agreement. The Supplier shall be entitled to subcontract any of its obligations and to assign any of its rights under this agreement but shall remain liable for its performance.

14.6 No term of the Contract is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party.