

TERMS AND CONDITIONS

The Customer's attention is drawn in particular to clause 12.

1. DEFINITIONS AND INTERPRETATION

The following definitions and rules of interpretation apply in these Conditions.

1.1 DEFINITIONS:

Agreement: the agreement between the Supplier and the Customer for the supply of the Products in accordance with these Conditions.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Commencement Date: has the meaning given in clause 2.2.

Conditions: the terms and conditions set out in this document (as amended from time to time). These Conditions apply to the exclusion of all other terms and conditions including any that the Customer purports to apply.

Customer: the person or firm who purchases Products from the Supplier.

Delivery Location: has the meaning given in clause 4.

Force Majeure Event: has the meaning given to it in clause 16.

Order: the Customer's order for the supply of Products in the Customer's purchase order form or the Customer's written acceptance of the Agreement.

Products: all goods and/or services including but not limited to computer hardware and software items to be provided by the Supplier to the Customer in accordance with these Conditions.

Supplier: Excotek Limited registered in England and Wales with company number 08907826.

Third-Party Software: all software owned by or licensed to the Customer from a third-party owner (whether or not supplied by the Supplier) and which comprises part of the Products.

1.2 INTERPRETATION

- (i) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (ii) The headings used in this Agreement are for ease of reference only and shall not affect its interpretation or construction.
- (iii) A reference to a party includes its personal representatives, successors and permitted assigns.
- (iv) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (v) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (vi) Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- (vii) reference to **writing** or **written** includes email.

2. ORDER ACCEPTANCE

2.1 The Order constitutes an offer by the Customer to purchase Products from the Supplier in accordance with these Conditions.

2.2 All Orders are subject to the availability of the Products and an Order will only be deemed accepted when the Supplier issues written acceptance of the Order at which point the Agreement shall come into existence (**Commencement Date**).

2.3 These Conditions apply to the Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied in law, trade, custom, practice or course of dealing.

- 2.4 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue.
- 2.5 All of these Conditions shall apply to the supply of Products except where application to one or the other is specified.

3. INDEPENDENT CONTRACTOR

The relationship between the Supplier and Customer is that of Independent Contractor. Neither party is the agent of the other and neither party has any authority to make any contractor make any obligation expressly in the name of the other party, without that party's prior written consent for express purposes connected with the performance of this Agreement.

4. DESPATCH AND DELIVERY

- 4.1 The Products shall be delivered to the location set out in the Order or such other location as the parties may agree (**Delivery Location**).
- 4.2 Any dates quoted for despatch and delivery are approximate only and the time of despatch and delivery is not of the essence. The Supplier shall not be liable for any delay caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.
- 4.3 Delivery is completed on the completion of unloading the Products and risk shall pass to the Customer at the time the Products are signed for by the Customer.
- 4.4 If Products have not been received, the Customer must notify the Supplier within 7 days of the date of the Supplier's Invoice. If proof of delivery is required, this must be requested by the Customer from the Supplier within 14 days of the date of the Invoice.
- 4.5 The Supplier may despatch and deliver the Products by instalments, which shall be invoiced and paid for separately. Any delay in despatch or delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.6 Subject to clause 8.2, any request by the Customer for cancellation of any Order or for the rescheduling of any deliveries will only be considered by the Supplier if received at least 12 hours before the despatch of Products, and shall be subject to acceptance by the Supplier at the Supplier's discretion and shall be subject to a reasonable administration charge. The Customer hereby agrees to indemnify the Supplier against all loss, costs (including the cost of labour and materials used and overheads incurred), damages, charges and expenses arising out of the Order, its cancellation or rescheduling.

5. RISK AND TITLE

- 5.1 The risk in the Products shall pass to the Customer on the Customer signing for the Products.
- 5.2 Title to the Products (limited to hardware Products) shall not pass to the Customer until the Supplier receives payment in full for the Products.
- 5.3 Until title to the Products has passed to the Customer, the Customer shall:
- (a) store the Products separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
 - (c) maintain the Products in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
 - (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 13; and
 - (e) give the Supplier such information relating to the Products as the Supplier may require from time to time.
- 5.4 If before title to the Products passes to the Customer, the Customer becomes subject to any of the events listed in clause 13 then, without limiting any other right or remedy the Supplier may have, the Supplier may at any time:
- (a) require the Customer to deliver up the all Products in its possession that have not been resold, or irrevocably incorporated into another product; and
 - (b) if the Customer fails to do so promptly, enter into any premises of the Customer or of any third party where the Products are stored in order to recover them.
- 5.5 The Customer's power of sale or right to use such Products shall immediately cease if an Administrative receiver is appointed over all or any part of its assets or if it adjudicated bankrupt or enters liquidation whether compulsory or voluntary, or if the Customer makes an arrangement with its creditors, or generally becomes unable to pay its debts within the meaning of the Insolvency Act 1986.
- 5.6 On termination of the Customer's power of sale or right to use the Products, the Customer will immediately hold the Products to the order of the Supplier.
- 5.7 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Products which remain the property of the Supplier, but if the Customer does so, all monies owing by the Customer to the Supplier shall (without prejudice to any other right or remedy of the Supplier) become due and payable immediately.

6. PRICING

- 6.1 Catalogues, price lists and other advertising literature or material as used by the Supplier are intended only as an indication as to the price and range of goods offered and no prices, descriptions or other particulars contained therein shall be binding on the Supplier. Such literature shall not form part of the Agreement nor have any contractual force.
- 6.2 All prices provided by the Supplier at the time of the Order are on an ex-works basis and the Supplier reserves the right to charge the Customer for all other associated costs including but not limited to any transport costs.
- 6.3 All quoted or listed prices are based on the cost to the Supplier of supplying the Products to the Customer. If prior to despatch or delivery of the Products, there is a price increase in any way of such costs in respect of Products which have not yet been delivered, the price payable may be subject to amendment by giving notice to the Customer any anytime before despatch.
- 6.4 All prices are exclusive of Value Added Tax and any similar taxes. All such taxes are payable by the Customer and will be supplied in accordance with UK legislation in force from time to time at the relevant tax point date.

7. PAYMENT TERMS

- 7.1 The Supplier shall invoice the Customer on the date of despatch of the Products.
- 7.2 Unless otherwise specifically requested and agreed, invoices will be payable by the Customer 30 days from the date of invoice and in full and cleared funds to a bank account nominated by the Supplier. Time for payment shall be of the essence.

- 7.3 If the Customer fails to make payment to the Supplier by the due date, then without limiting the Supplier's remedies under clause 13 (Termination), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum is made whether before or after judgment, at the rate of 4% per annum above the base rate for the time being of the Barclays Bank plc.
- 7.4 All amounts due under the Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 7.5 Notwithstanding despatch and the passing of risk in the Products to the Customer pursuant to Clause 5 or any other provision of these Conditions, other property of the hardware Products shall not pass to the Customer until the Supplier has received payment in full and in cleared funds.
- 7.6 The Supplier reserves the right to cease the supply of Products to the Customer at any time and reject any Orders placed by the Customer where monies remain outstanding. On such cessation of supplies, the Supplier reserves the right to withdraw any credit facility such that the whole of the Customer's account becomes due for payment forthwith.

8. SPECIFICATION OF PRODUCTS

- 8.1 The Supplier will not be liable in respect of any loss or damage caused by or resulting from any variation for whatsoever reason in the manufacturer's specifications or technical data and will not be responsible for any loss or damage resulting from curtailment or cessation of supply following such variation. The Supplier will use its reasonable endeavors to advise the Customer of any such impending variation as soon as it receives any such notice thereof from the manufacturer.
- 8.2 Unless otherwise agreed, the Products are supplied in accordance with the manufacturer's standard specifications as these may be improved, substituted or modified. The Supplier reserves the right to increase its quoted or listed price, or to charge accordingly in respect of any Orders accepted for Products of non-standard specifications and in no circumstances, will it consider cancellation of such Orders or the return of such Orders.
- 8.3 The Supplier reserves the right to amend the specification of the Products if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.

9. PROPRIETARY RIGHTS IN SOFTWARE PRODUCTS

- 9.1 The Customer hereby acknowledges that any proprietary rights in any Third-Party Software supplied hereunder including, but not limited to any title or ownership rights, patent rights, copyrights and trade secret rights, shall at all times and for all purposes vest and remain vested in the Third-Party Software owner.
- 9.2 The Customer hereby acknowledges that it is the Customer's responsibility to comply with any terms and conditions of licence attaching to Third-Party Software supplied and delivered by the Supplier (including if so required the execution and return of a Third-Party Software licence). The Customer is hereby notified that failure to comply with such terms and conditions could result in the Customer being refused a software licence or having the same revoked by the proprietary owner.
- 9.3 The Customer shall indemnify the Supplier against all liabilities, costs, charges, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights brought by a Third-Party Software owner as a result of any breach by the Customer.
- 9.4 **NO TITLE OR OWNERSHIP OF SOFTWARE PRODUCTS OR ANY THIRD-PARTY SOFTWARE LICENCED TO THE CUSTOMER UNDER THIS AGREEMENT IS TRANSFERRED OR DEEMED TO BE TRANSFERRED TO THE CUSTOMER UNDER ANY CIRCUMSTANCES.**

10. RETURNS

- 10.1 The Supplier reserves the right to levy an administration charge in respect of Product returns.
- 10.2 Any Products returned to the Supplier are subject to the following: -
- (a) prior written authority from the Supplier permitting the return to be issued at the Supplier's discretion;
 - (b) the Product must be returned within 30 days of the date of the Supplier's invoice;
 - (c) the Products must be properly packaged and returned in the manufacturers original packaging and such packaging shall not be damaged or defaced;
 - (d) the Products must be in a resellable condition; and
 - (e) the Product is still under warranty as detailed at clause 11.
- 10.3 The Supplier reserves the right to reject the return of any Products which do not comply with the conditions set out in clause 10.2.
- 10.4 If the Supplier agrees (at their discretion) to accept any Products which do not comply with clause 10.2, the Supplier reserves the right to charge the Customer for all costs associated with restoring the Products to a resellable condition.

11. WARRANTY

- 11.1 The Supplier warrants that it has good title to and/or licence to supply all Products to the Customer.
- 11.2 If any part of the supplied hardware Products should prove defective in materials or workmanship under normal operation or service, such Products will be repaired or replaced only in accordance with any warranty cover or terms as provided by the manufacturer of the Products **PROVIDED THAT** no unauthorised modifications to the Product or to the system of which the Product forms part of, have been made. The Supplier shall not be responsible for the cost of labour or any other expenses incurred by the Customer in repairing defective or nonconforming Product parts.
- 11.3 All software Products supplied hereunder are supplied "as is" and the sole obligation of the Supplier in connection with the supply of software Products is to use all reasonable endeavours to obtain and supply a corrected version from the manufacturer concerned in the event that such software Product should fail to conform to the Product description **PROVIDED THAT** the Customer notifies the Supplier of any such non-conformity within 90 days of the date of delivery of the applicable software Product. Specifically, the supplier shall not accept any liability in relation to any losses, costs or expenses which arise through any difficulty caused over date or currency changes.
- 11.4 If the Products are rejected by the Customer as not being in accordance with the Customer's Order pursuant to clauses 11.2 or 11.3, the Supplier shall only accept the return of such Products **PROVIDED THAT** it receives written notification giving detailed reasons for such rejection. The Supplier shall not accept

- any claim for compensation, indemnity or refund under liability, if any, which has been established or agreed with the manufacturer and where applicable the insurance company.
- 11.5 Where Products are rejected, under no circumstances shall invoiced Products be deducted or set off by the Customer from any amounts payable to the Supplier until the Supplier has agreed and provided a corresponding credit note.
- 11.6 **EXCEPT AS SPECIFICALLY SET OUT IN THIS CLAUSE 11, THE SUPPLIER DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, BY STATUTE OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF DESCRIPTION, DESIGN, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM ANY PREVIOUS COURSE OF DEALING, USAGE OR TRADE PRACTICE.**
- 12. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**
- 12.1 Nothing in this Agreement limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation; or
 - (c) breach of the terms implied by section 12 the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 12.2 Subject always to clause 12.1, neither party shall be liable whether in contract, tort (including for negligence and breach of statutory duty) misrepresentation (whether innocent or negligent), restitution or otherwise, for:
- (a) any loss (whether direct or indirect) of profits, business, revenue or goodwill;
 - (b) loss of corruption (whether direct or indirect) of data or information; or
 - (c) any special, indirect nor consequential loss, costs, damages, charges or expenses however arising under the Agreement.
- 12.3 For the avoidance of doubt, except as stated in clause 12.1 above, the Supplier disclaims and excludes all liability to the Customer in connection with these Conditions including the Customer's use of the Products. All terms of any nature, express or implied, statutory or otherwise, as to correspondence with any particular description or sample, fitness for purpose or merchantability, are hereby excluded.
- 12.4 The Customer shall indemnify and defend the Supplier and its employees in respect of any claims brought by third parties which are occasioned by or arise from any the Supplier's performance or non-performance pursuant to the instructions of the Customer or the Customer's authorised representative.
- 12.5 The parties hereby acknowledge and agree that the limitations contained in this clause 12 are reasonable in light of all circumstances.
- 13. TERMINATION**
- 13.1 This Agreement may be terminated forthwith by notice in writing:
- (a) by the Supplier if the Customer fails to pay any sums due hereunder by the due date notwithstanding the provisions for late payment as in clause 7;
 - (b) if either party commits a material breach of its obligations under this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 14 days after receipt of notice in writing to do so;
 - (c) if either party is involved in any legal proceedings concerning its solvency, or ceases trading, or commits an act of bankruptcy or is adjudicated bankrupt or enters liquidation, whether compulsory or voluntary, other than for the purposes of an amalgamation or a reconstruction, or makes an arrangement with creditors or petitions for an administration order or has a Receiver or Manager appointed over all or any part of its assets or generally becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, then without prejudice to any other rights or remedies available to it, the other party shall have the right to terminate this Agreement forthwith;
 - (d) the other party suspends, threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (e) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy.
- 13.2 Any termination of this Agreement pursuant to this clause shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law, and shall not affect any accrued rights or liabilities of either party.
- 14. EXPORT AND/OR RE-EXPORT LIMITATION**
- Having regard to the current statutory or other United Kingdom government regulations in force from time to time and, in the case of Products manufactured in the United States of America, to the current export rules and regulations of the United States Department of Commerce in force from time to time and regardless of any disclosure made by the Customer to the Supplier of an ultimate destination for any Products, the Customer will not export or re-export any Products without first obtaining all such written consents or authorisations as may be required under any applicable government regulations.
- 15. DATA PROTECTION**
- Each of the Supplier and the Customer warrants to the other that it will at all times comply with its obligations (if any) under the Data Protection Act 2018 (as amended from time to time).
- 16. GENERAL**
- 16.1 **Force Majeure.** Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations (other than payment) under this Agreement if that delay or failure results from events, circumstances or causes beyond its reasonable control. In these circumstances the affected party shall be entitled to a reasonable extension of the time for performing its obligations, provided that, if the period of delay or non-performance continues for 12 weeks, the party not affected may terminate this Agreement by giving 14 days' written notice to the other party.
- 16.2 **Confidentiality.**
- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 16.2(b).
 - (b) Each party may disclose the other party's confidential information:

- (i) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 16.2; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
 - (c) Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Agreement.
- 16.3 **Assignment**
- (a) The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Agreement;
 - (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligation under the Agreement without the prior written consent of the Supplier.
- 16.4 **Notice**
- (a) Any notice or other communication given to a party under or in connection with the Agreement shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier or email.
 - (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 16.4(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.
 - (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action, or where applicable, any arbitration or other method of dispute resolution.
- 16.5 **Severance** If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Agreement.
- 16.6 **Waiver** No failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 16.7 **Variation.** No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 16.8 **Entire Agreement.**
- (a) This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
 - (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement.
- 16.9 **No Partnership or Agency.** Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party, the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.
- 16.10 **Third Party Rights.** No one other than a party to this Agreement shall have any right to enforce any of its terms.
- 16.11 **Governing Law.** The Agreement, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.
- 16.12 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Agreement or its subject matter or formation.