

# THE CONDITIONS

## 1. DEFINITIONS AND INTERPRETATION

- 1.1. The following words or expressions have the meanings set opposite them:  
"this Agreement" the agreement between the Company and the Customer in which the Company agrees to supply or provide the Product to the Customer.  
"these Conditions" the terms and conditions set out in this Agreement  
"the Company Charges" the Company's current charges for the provision of the Product as notified to the Customer from time to time.  
"the Company Software" software programs and program enhancements developed by the Company.  
"the Delivery Date" the date(s) of delivery of the or in the case of services and/or training the date of completion of the supply of such services and/or training.  
"the Equipment" the items of hardware (including the operating system forming part of the hardware) identified in the Schedule.  
"the Service Desk" the Company's services including telephone enquiries problems identification and where specified in the Schedule the resolution of problems over an RSC.  
"the Product" all or any equipment and/or services to be supplied or provided by the Company to the Customer.  
"RSC" means remote support connection. An electronic connection usually made over a virtual private network (VPN), other connection types may be used as agreed with the Customer.  
"the Schedule" the schedule or schedules describing the Product.  
"the Software" the Company Software and/or any software comprising Third Party Equipment.  
"Third Party Equipment" any software, items of hardware including the operating systems or services provided by any person other than the Company and all hardware whether or not supplied by the Company.
- 1.2. The headings are included for ease of reference only and shall not affect the interpretation of this Agreement.
- 1.3. References to clauses or schedules are references to the clauses in or schedules to this Agreement.
- 1.4. Reference to the singular shall be deemed to include the plural and vice versa and reference to one gender shall be deemed to include reference to the other two genders.

## 2. THE SCHEDULE

- 2.1. The Schedule is based on information supplied by the Customer to the Company and accurately describes to the Customer's satisfaction the Customer's requirements and the Customer agrees that the specification of the Product is adequately described in the Schedule and satisfactory for the Customer's requirements.
- 2.2. Any changes to the Schedule required by the Customer must be notified to the Company in writing and accepted by the Company in writing. Where such changes cause an increase or decrease in prices the Company will estimate the increase or decrease. No change to the Schedule will be accepted by the Company if any resulting change in price is not agreed by the Customer in writing. Failure to agree any changes will not release the Customer from the Customer's obligations under the original terms of this Agreement.

## 3. PRICES

- 3.1. The Company reserves the right to reclaim travel and accommodation expenses and any other expenses properly incurred by the Company in carrying out its obligations.
- 3.2. The Company shall be entitled to vary these Conditions and to vary the Company charges at six monthly intervals provided 30 days notice is given to the Customer in writing of either event. Such variation will only apply to work carried out after the expiry of the 30 days notice and the Customer will be deemed expressly to have agreed to such variation by the payment of any invoice 30 days or more after the Company has sent any notice of variation.
- 3.3. The price for the Product shall be the amount specified in the Schedule or the amount subsequently notified by the Company to the Customer in accordance with clause 3.2 as being the Company Charges in respect of that Product.
- 3.4. All prices exclude VAT travelling and other expenses which will be charged in accordance with the Company Charges.
- 3.5. All daily rates relate to a seven-and-a-half-hour day (part days charged pro-rata) and include an allowance for reasonable travel time to customer location. Excess travel time will be charged at the appropriate rate detailed in the Schedule.
- 3.6. Services requested outside the normal United Kingdom working hours of 9.00 am to 5.30 pm, Monday to Friday, excluding UK Public Holidays will be subject to the following premiums:
  - 1) Monday to Saturday - daily rates plus 50%
  - 2) Sundays and United Kingdom public holidays - daily rates plus 100%
- 3.7. If the Customer cancels or changes an order, any cancellation or change fees payable by the Company for all or part of an order will be paid by the Customer on demand by the Company.
- 3.8. Price information specified in the schedule shall supersede clauses 3.1,3.2,3.5,3.6 and 3.7

## 4. PAYMENT

- 4.1. The Company shall invoice the Customer in the manner described in the Schedule and payment is due 30 days from the date of schedule.

- 4.2. Unless otherwise stated all payments are to be made in sterling to the Company's address as stated on the invoice.
- 4.3. All prices referred to in this Agreement are exclusive of VAT unless otherwise stated.
- 4.4. Where any agreement to supply the Product provides for the Product to be delivered by instalments which are to be separately paid for, such agreement shall not be severable and failure by the Customer to pay for or accept delivery of any instalment by the due date shall entitle the Company at its option to treat the whole agreement with the Customer as repudiated.
- 4.5. In the event of any legislative changes the Company reserves the right to levy a charge to the Customer.

## 5. TITLE TO GOODS AND RISK OF LOSS

- 5.1. The Product shall be at the Customer's risk on delivery of the Product either to the Customer or to a carrier. The Customer shall properly insure the Product for the benefit of the Company between the time risk of loss or damage passes and the time title passes.
- 5.2.1. Notwithstanding the risk in the Product passes to the Customer in accordance with clause 5.1. the product shall remain the sole and absolute property of the Company and title to and legal and equitable ownership of the Product shall not pass to the Customer until payment is received by the Company for all monies due from the Customer to the Company in respect of the Product. If nevertheless, the Customer sells the Product before the Product has been paid for in full, the Customer shall hold the proceeds of the sale in trust for the Company
- 5.2.2. The Customer may not sell or charge the Product without the written consent of the Company until the Product is paid for in full
- 5.2.3. The Customer will not at any time cause or permit or suffer any labels badges serial numbers or other means of identification of the Product to be removed defaced or obscured

## 6. CUSTOMER CO-OPERATION AND ACCEPTANCE

- 6.1. The Customer shall at all times and at no cost to the Company provide the Company with such information and documentation as is necessary to enable the Company to carry out its obligations efficiently and without delay and the Customer shall also provide at no cost such access, secure storage, personnel, facilities and the use of services at the Customer's premises and such other things as may be required by the Company for that purpose.
- 6.2.1. Unless the Schedule specifies otherwise it is the Customer's responsibility to inspect the Product on the Delivery Date and to carry out acceptance tests of the Product and must notify the Company in writing if there is any defect in the Product no later than 30 days from the Delivery Date. If the Customer shall not notify the Company within that period of 30 days the Product shall be deemed to be accepted by the Customer and the Company will thereafter have no liability for any faults which such inspection and testing procedures ought to have revealed
- 6.2.2. Notwithstanding clause 12.3.2. where defects are notified by the Customer to the Company the extent of such defects shall be agreed by the Customer with the Company and the Company shall remedy the defect as soon as reasonably practicable. No later than 30 days from the date any defects have been rectified the Product will then be re-inspected by the Customer
- 6.2.3. If the Customer shall fail to carry out the re-inspection the Product shall be deemed to be accepted by the Customer 30 days following the day following the date on which any defects have been remedied and the Company will thereafter have no liability for any faults which such re-inspection ought to have revealed
- 6.2.4. The use of the Product by the Customer in a live situation shall be deemed as acceptance of the Product by the Customer.

## 7. HARDWARE

- 7.1. The Company shall endeavour to deliver the Equipment on the Delivery Date.
- 7.2. The Customer will pay for any charges incurred by the Company for the provision of special equipment, staff or works required to deliver and/or install the Equipment to the designated location or arising because of the nature of the location or the available access thereto.
- 7.3. The Customer shall ensure, at its own expense, before the Delivery Date, that its premises are ready and available to house the Equipment and that all the environmental requirements and installation facilities recommended by the Company have been provided.
- 7.4. The Customer will reimburse the Company for any expenses and costs (including the costs of transport and storage of the Equipment) arising from any non-compliance by the Customer with the terms of clauses 7.2. and 7.3.
- 7.5. The Customer will be charged for delivery as specified in the Schedule. Where no delivery costs are specified the Customer shall pay the Company the delivery costs directly incurred by the Company.

## 8. SOFTWARE

- 8.1.1. Where the Software is to be supplied this will be based on the Software running on a processor of a type or model noted in the Schedule. the Company may levy an upgrade charge if the processor is changed. Any upgrade charge for such software will be based on the difference in the current list prices of the software running on the current and upgraded processor.

- 8.1.2. It is the Customer's responsibility to install future releases of the Software and to apply the modifications or additions to that new release. the Company will develop and document the changes to allow the Customer to undertake the Customer's responsibilities. the Company will provide, at the Customer's request, on site services to assist with the implementation of such modifications or additions to the new release of the Software. Such services will be provided at the Company Charges.
- 8.2. Where the Company supplies the Company Software to the Customer the Company will correct any errors in respect of the Company Software free of charge to the Customer if:
- 1) the errors are caused by the Company; and
  - 2) if they are notified to the Company in writing within three months of the Delivery Date.
- 8.3.1. Third party maintenance of the Software will be contracted by the Customer with a third party specialist maintenance contractor under a separate maintenance agreement.
- 8.3.2. Where the Schedule specifies that the Software is to be maintained by the Company, the Company will provide future releases issued during the period specified in the Schedule.
- 9. SERVICES**
- 9.1. Services will be called off as required subject to prior agreement with the Company to identify individual(s) and timescales
- 9.2. Unless otherwise specified in the Schedule:
- 1) the Company staff will work on site at the Customer's premises
  - 2) the activities of the Company staff will be planned and monitored by the Customer in accordance with the Customer's standards
- 9.3. The services will be supplied at the Company Charges as specified in the Schedule
- 9.4. Where the Product comprises partly or wholly of services provided by the Company at a fixed price, the Company will correct any errors free of charge to the Customer if:
- 1) those errors are caused by the Company; and
  - 2) if they are notified to the Company in writing within three months of the completion of the services which comprise the Product
- 9.5.1 Where the Company provides the Product comprising partly or wholly of services to the Customer and is instructed to interact directly with the Customer's live environment ('the Instructions') the Customer authorises the Company to act in accordance with the Instructions on the following basis:  
The Customer acknowledges and agrees as follows:
- 1) that there is risk that data may be lost permanently [and damage may be caused] by the Company interacting directly with the Customer's live environment
  - 2) it is the Customer's responsibility to ensure that the Company has performed sufficient tests in the Customer's test environment which are [acceptable] to the Customer before the Instructions are given to the Company by the Customer
  - 3) the Customer shall at all times accept the interaction of the Company with its live environment as conclusive evidence of the Instructions.
  - 4) the Customer shall confirm the Instructions in writing if called upon to do so by the Company provided that failure to do so shall not render invalid any action taken by the Company pursuant to the Instructions and the Company shall not incur any liability howsoever arising from the Instructions
- 9.5.2. The Company shall not be liable for any consequences howsoever arising out of the interruption of, delay and/or loss of any data arising out of the Company's interaction with the Customer's live environment pursuant to the Instructions.
- 9.5.3. The Company shall not be liable for any consequences howsoever arising out of the Instructions if the consequences result from force majeure namely any act or event outside the control of the Company.
- 9.5.4. The Customer acknowledges and agrees to indemnify and to keep indemnified the Company against all claims, demands, liabilities, losses, costs, actions, proceedings and expenses howsoever arising which the Company may incur or suffer by reason of the Company acting in accordance with the Instructions.
- 9.6. Where the Customer requests services, but subsequently cancels that request within 3 business days prior to the planned commencement of the delivery of those services, then the Company reserves the right to charge for those services.
- 10. RIGHTS**
- 10.1. Subject to the payment of all monies due from time to time by the Customer the Company shall grant and grants a non-exclusive non-transferable licence to the Customer to use only for the purpose of the Customer's business the Company Software.
- 10.2. No title to copyright in, or ownership of any part of the Company Software is hereby or will at any time be transferred to the Customer.
- 10.3. The Customer agrees to protect the property right of the Company in the Company Software and not allow any third party to copy, alter or remove the Company Software and to notify the Company of the happening of any such event known to the Customer.
- 10.4. All copies of the Company Software made by the Customer including translations compilations and partial copies with or without modifications and up dated work shall remain the property of the Company. the Customer will reproduce and include a copyright notice on any such copies in accordance with the copyright instructions provided by the Company from time to time.
- 10.5. The Customer shall maintain a security copy of the Company Software with modifications in good condition and it shall be available to the Company to inspect at any time, such security copy being both in data form and machine readable form.
- 10.6. The Customer will maintain records of the number and location of all copies of the Company Software and will notify the Company in writing of any changes
- 10.7. The Customer shall not:
- 1) save as provided in this Agreement make back-up copies of the Company Software;
  - 2) reverse compile, copy or adapt the whole or any part of the Company Software for the purposes of correcting errors in the Company Software;
  - 3) save solely for the purposes expressly permitted by and in accordance with section 50 Copyright Design and Patent Act 1988 copy adapt or reverse compile the whole or any part of the Company Software
  - 4) remove or alter any copyright or other proprietary notice on any of the Company Software
- 10.8. The Customer will ensure to the best of its ability at the time of disposing of any media that the Software Package contained on such media has been erased or otherwise destroyed
- 10.9. The Customer will not disclose provide or otherwise make available to any other person or sell lease encumber licence charge dispose or deal in any way with the Company Software
- 10.10. The Customer shall not modify or amend the Company Software and/or merge such material into other program material without the written consent of the Company.
- 10.11. The Customer shall fully indemnify the Company for all the consequences of any breach of this clause
- 10.12. Provision of source code is strictly at the Company's discretion and subject to written agreement.
- 11. CONFIDENTIALITY**
- 11.1 The Company will take all reasonable steps necessary to ensure that all secret or confidential information given by the Customer to the Company is treated as confidential information unless the Company is required by law to disclose the information and save to the extent that such information is in the public domain or is required to be used or disclosed by the Company in the performance of this Agreement.
- 12. LIMITATION OF LIABILITY**
- 12.1 The Customer accepts that, save as specified in the Schedule, the Company does not know every purpose for which the Product is required or every circumstance under which the Product may be required or expected to operate or whether the persons using or operating the Product are competent to do so or appropriately trained.
- 12.2.1 The Customer agrees that he does not rely on any representation by the Company in any proposal by the Company or otherwise other than any representation included in the Schedule. Any information or representation as to the performance of any of the Product supplied by a third party is based on information provided by the manufacturer or supplier of that part of the Product and does not form part of this Agreement.
- 12.2.2 The Customer acknowledges that any proposal prepared and submitted by the Company for the Customer does not form part of this Agreement.
- 12.3.1 The Customer acknowledges that the Company can procure the supply of Third Party Equipment at a lower price than the Customer can procure the same from the manufacturer or supplier. the Customer further acknowledges that it will receive the benefit of any warranty or guarantee given to the Company or supplier by the manufacturer in respect of Third Party Equipment and the Company agrees to assign its rights in respect of such warranty or guarantee if required so to do by the Customer.
- 12.3.2 In the circumstances the Customer acknowledges and agrees that the Company will not be liable for any defect in Third Party Equipment save to the extent the Company has rights against the manufacturer or supplier and the Company will use its reasonable endeavours to enforce those rights on demand by the Customer.
- 12.4. The Customer acknowledges that although the Product may be specified by the Company as ready for use after 31 December 1999 the Product may not operate or operate to the Customer's satisfaction after that date if the Product is used now or in the future with Third Party Equipment or in a modified form.
- 12.5.1 The Company does not exclude liability for any death or personal injury caused by the negligence of the Company or any employee agent or sub-contractor of the Company and no limitation or exclusion of liability in this Agreement shall apply in respect of the same.
- 12.5.2 The Company does not exclude any liability which it is not lawful to exclude now or in the future.
- 12.5.3 In every other respect save as provided in clauses 8.2 and 9.4 the Company excludes liability to the fullest extent permitted by law.

- 12.6. Without prejudice to the generality of clause 12.5.3:
- 1) the Company's liability shall in no event exceed the price payable under this Agreement; and
  - 2) the Company shall not in any event be liable for any indirect, economic, consequential loss, loss of goodwill, loss of data or loss of profit or income suffered by the Customer or any third party or for any loss arising by the use of the Product whether or not in association with Third Party Equipment.
- 12.7.1 The Customer acknowledges that the price of the Product has been agreed on the assumption that the Company will have no greater liability than that described in this Agreement, and that the Company may have been willing to accept greater liability on payment of an additional sum and the Customer therefore agrees and accepts on the basis of the price agreed that the limitations on liability in this Agreement are fair and reasonable.
- 12.7.2 The Customer acknowledges that it may extend its rights in relation to the Product if it has entered into an appropriate maintenance agreement.
- 12.8.1 Notwithstanding clause 12.6 the Customer agrees that the total liability of the Company in respect of any one breach shall be limited:
- 1) in the case any item of the Equipment to the amount due or paid under this Agreement in respect of that item
  - 2) in the case of any item of the Software to the amount due or paid under this Agreement in respect of that item.
  - 3) in the case of services provided to the amount due under this Agreement in respect of services and the parties agree that such amounts represent a genuine pre-estimate of the Customer's loss
- 12.8.2. For the purposes of clause 12.8 a number of breaches which together result in or contribute to substantially the same loss or damage shall be treated as one breach.
- 12.9. The Customer acknowledges and accepts that the liability of the Company is contingent upon:
- 1) the Customer or any third party not deviating from the instructions of the Company relating to the Product or from any other advice supplied by the Company and not in any way delaying in acting upon such advice;
  - 2) the Customer providing all reasonable assistance and full and free access to the Customer's premises for the Company to remedy any defects or defaults where the Company so requires;
  - 3) the Customer informing the Company as soon as reasonably practicable of any problems and then allowing the Company a reasonable time for resolving such problem
- 12.10. No claim in contract or tort against the Company shall be valid or be capable of being made unless such claim is notified in writing to the Company within 2 years of the date of this Agreement.
- 12.11. Neither party shall be liable for failure to perform or damage caused, if the failure or damage results from force majeure namely any act or event outside the control of either of the parties.
13. **TERMINATION**
- 13.1. The Company shall be entitled to terminate this Agreement if the Customer shall be insolvent or a receiver administrative receiver provisional liquidator or manager shall be appointed over all or any part of its business or assets or if the Customer shall propose or resolve to be wound up or shall propose or become the subject of a company voluntary arrangement or make any compromise or composition with its creditors or if the Customer is not a company the Customer shall do or permit or suffer or be the subject of any analogous act or event applicable to individuals or partnerships.
- 13.2. If this Agreement shall be terminated other than by reason of the Company or any successors of the Company ceasing to trade:
- 1) the Customer agrees to return any and all copies of any source code to the Company; and
  - 2) any licence of the Company Software shall immediately be terminated; and
  - 3) the Customer agrees to indemnify the Company in respect of any sums paid by the Company to a manufacturer or supplier in relation to this Agreement and any sums reasonably incurred by the Company in relation to this Agreement
14. **STAFF**
- 14.1. During this Agreement and for a period of 12 months after its termination, neither the Customer nor any associated company of the Customer shall engage directly or indirectly on a permanent or temporary basis as an employee, sub-contractor, agent or otherwise any person who is an employee, sub-contractor or agent of the Company or has been at any time in the 12 months prior to the engagement by the Customer.
- 14.2. The Company pre-estimates that the loss caused to its business by a breach of clause 14.1. can be expressed as:
- 1) in the case of an employee of the Company, an amount equal to 90 times the daily fee rate for the employee concerned; and
  - 2) in the case of a sub-contractor or agent, 20% of all salary and taxable emoluments payable to or receivable by the sub-contractor or agent for services rendered to the Customer (or any associated company of the Customer), such sum being calculated gross on an annualised basis.
- It is agreed that such amounts comprise liquidated damages and the Customer accepts such pre-estimate of such liquidated damages as reasonable and agrees to pay the same upon demand in the event of a breach of clause 14.1.
15. **GENERAL**
- 15.1. The Customer acknowledges that it has read and understands these Conditions and agrees to be bound by them.
- 15.2. This Agreement together with the Schedule (which forms an integral part of this Agreement) sets forth the entire agreement and understanding between the parties as to the subject matter of this Agreement and merges all prior discussions between the parties and to the exclusion of any document issued by the Customer.
- 15.3. Any amendment to or variation of this Agreement shall not be effective unless evidenced in writing and signed by a director of the Company and an authorised representative of the Customer.
- 15.4. All notices consents requests or other communications in relation to this Agreement shall be in writing and must be addressed to the Company at its registered office and to the Customer at the address of the Customer referred to in this Agreement or such address as may subsequently be notified by either of the parties to the other in accordance with this clause. Any such notice shall be deemed duly given 48 hours after being posted by first class pre-paid post or if delivered by hand at the time of delivery.
- 15.5 This Agreement shall be governed by and construed in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the Courts in England.
- Signature of the Agreement shall be deemed as signing acceptance of the above Conditions and the attached referenced schedules.
- Individual additional schedules can be added to this Agreement at subsequent dates by signature of the Schedule.