

## ALCOVE TERMS AND CONDITIONS OF SALES

### 1. Definitions

- "Customer" the individual purchasing the Goods and Services.  
"Conditions" these conditions, forming part of the Contract.  
"Contract" these Conditions (and any documents expressly referred to in them).  
"Contract Price" the sum(s) as set out in the Order.  
"Goods" the goods as set out in the Order.  
"Licence" the licence of the Software granted pursuant to these Conditions.  
"Licence Fees" the monthly fees payable for the Licence and ongoing support  
"Licence Period" the period of the Licence as set out in the Order.  
"Order" the order for Alcove Goods and Services.  
"Payment Date" the date and time when the Order for Alcove Goods and Services was placed.  
"Site" the place where the Goods are to be delivered and/or the Services are to be carried out.  
"Software" the Alcove software used by the Goods and licensed pursuant to these Conditions.  
"Services" the services provided by Alcove or its partners in addition to the Goods.

### 2. Contract and Licence

- 2.1. The Contract is comprised of these Conditions to the exclusion of all other terms and conditions.  
2.2. The Contract contains the entire agreement between the parties and all previous understandings and agreements relating to the subject matter are replaced by the Contract. No terms or conditions endorsed upon, delivered with or contained in any Customer's purchase order, confirmation of order, specification or other document will form part of the Contract simply as a result of such document being referred to in the Contract.  
2.3. Alcove's sale to the Customer is limited to and expressly made conditional on the Customer's acceptance of these Terms and Conditions of Sale. These Terms and Conditions govern all sales of product(s) by Alcove to the Customer regardless of whether the Customer purchases through the medium of telephonic orders, Internet orders, electronic orders or otherwise, and supersede and take precedence over any other terms and conditions. Any term or condition of the Customer's order which is in addition to, inconsistent with, contrary to or different from these Terms and Conditions is rejected and shall not become part of the contract unless explicitly referenced and agreed to in writing by an authorised executive of Alcove. Retention and/or acceptance by the Customer of any product delivered by Alcove, or payment by the Customer of any invoice tendered hereunder, shall operate as acceptance by the Customer of these Terms and Conditions. Alcove's failure to object to any provision contained in any communication from the Customer shall not be construed as a waiver of these Terms and Conditions nor as an acceptance of any such provision.  
2.4. Subject to the payment of the Licence Fees, Alcove grants to the Customer a non-exclusive licence of the Software to be used in conjunction with the Goods for the Licence Period and for an unlimited number of end-users.  
2.5. The Customer shall have the right to grant to an end-user a sub-licence of the Software, provided that:  
2.5.1. all sub-licences granted shall terminate automatically on termination of the Contract or expiry of the Licence Period; and  
2.5.2. the Customer shall be liable for all acts and omissions of any sub- licensee and shall indemnify the Licensor against all costs, expenses, claims, loss or damage incurred or suffered by Alcove, or for which Alcove may become liable (whether direct, indirect or consequential and including any economic loss or other loss of profits, business or goodwill) arising out of any act or omission of any sub- licensee.

### 3. Contract Price and Terms of Payment

- 3.1. The Contract Price shall be the sum(s) set out in the Order (and, unless otherwise stated, shall be exclusive of VAT) as may be adjusted pursuant to these Conditions.  
3.2. By submitting an Order to Alcove, the Customer agrees to be subject to these Terms and Conditions of Sale in their entirety. An Order is a bonafide commitment showing definite prices and quantities of Goods and Services.  
3.3. Prices quoted in the Order include all relevant taxes applicable to the products sold in this transaction, and which taxes will, in any event, be paid by the Customer unless the Customer provides Alcove with a proper tax exemption certificate at the time the order is placed. If the person being monitored is chronically sick or disabled, they may be eligible for VAT relief. VAT eligibility can be verified by reference to the HMRC website »  
3.4. Terms of Payment. Payment shall be in British Pounds GBP £ unless otherwise stated. Depending on subscription model chosen by the Customer, Alcove may require full or partial payment in advance, and if such requirement is not met, may cancel the order or any part thereof and receive reasonable cancellation fees. If the Customer fails to pay the price or any other payment due hereunder, Alcove may recover, in addition to the price or payment, interest thereon at the rate of 4% per annum above the current base rate of Barclays Bank plc from the due date until payment is made, and all costs of collection including, but not limited to reasonable legal fees. Terms of payment hereunder may be changed by Alcove at any time.  
3.5. Prices quoted for Goods and Services or posted on Alcove's website or otherwise presented are subject to change without notice. Acceptance of any order sent to Alcove by the purchaser is entirely at the discretion of Alcove.  
3.6. Alcove shall, upon providing 7 days prior notice to the Customer, be entitled to suspend further deliveries of the Goods and/or Services, and/or treat the Contract as repudiated in the event of any delay or default in payment for more than 14 days after the due date for payment. Alcove shall not be liable to the Customer for non-delivery or delays in the Services arising as a result of the Customer's default in making payment.

### 4. Specifications and Parties General Obligations

- 4.1. The Customer shall be solely responsible for ensuring that all information given to Alcove (directly or indirectly) are accurate suitable and correct. Examination or consideration of such information shall not of itself limit the Customer's responsibility.  
4.2. The Customer shall be solely responsible for gaining any appropriate and requisite consents from all users of the Alcove Goods and Services (or their legal representatives), including but not limited to consent pursuant to the Data Protection Act 1998 ("DPA") and such replacement law or regulation in respect of personal data as is in force in England from time to time).  
4.3. No variation to the Goods and/or the Services requested by the Customer shall be binding on Alcove unless agreed to by the parties in writing, including as part of such agreement, any change to the Contract Price arising as a consequence of the variation of the Goods and/or the Services. If Alcove agrees to any such variation, any times for delivery of the Goods and/or Services shall be extended as is reasonable in the circumstances.  
4.4. Alcove reserves the right to substitute or alter the Goods and/or the Services provided that such substitution or alteration shall not adversely affect the Customer to any material extent.  
4.5. The Customer shall give, or shall procure that any recipient of the Goods and/or the Services gives, Alcove access to the Site at all reasonable times, and gives all reasonable assistance and information to Alcove, to enable Alcove to carry out its obligations under the Contract without interruption

### 5. Time for Delivery and Completion of the Services

- 5.1. Delivery of the Goods and/or Services shall be within a reasonable time of the Payment Date.  
5.2. Alcove is not responsible for damage or loss in transit. Alcove will use commercially reasonable efforts to deliver as specified herein but shall not be liable in any manner for any delays in delivery. The Customer bears all risk of delays in delivery, and waives all claims against Alcove arising out of any such delays. Alcove reserves the right to apply storage charges as necessary in the event that delivery of Goods available for dispatch is delayed due to the Customer's request or default.  
5.3. Any Services provided by Alcove will be undertaken during normal working hours (i.e. Mon-Fri 8.30am-5.30pm excluding Bank Holidays) although if necessary and/or at the Customer's request, subject to Alcove's agreement, such Services may be undertaken outside these hours.  
5.4. Any ongoing support and maintenance in respect of the Software shall be provided subject to these Conditions.  
5.5. Orders accepted by Alcove may be cancelled or rescheduled by the Customer within 30 days of delivery. Alcove shall have the right without penalty or payment to cancel any order accepted, or to refuse or delay the shipment thereof: (i) if the Customer fails to make promptly any payment due Alcove or to meet any other reasonable requirements established by Alcove, (ii) if any act or failure to act of the Customer delays Alcove's performance, or (iii) if the Customer's credit becomes impaired. In such event, Alcove shall be entitled to receive reimbursement for its reasonable and proper cancellation charges.  
5.6. Notice and Returns. Any claims for defective product(s) must be made in writing by the Customer. In addition, the Customer must promptly return any rejected product(s) to Alcove, accompanied by a valid return authorisation obtained from Alcove. For any valid claim timely made, Alcove, at its option, may repair product(s) or replace product(s) with an identical or substantially similar product(s).

### 6. Risk and Insurance

- 6.1. The risk in Goods supplied by Alcove shall pass to the Customer upon delivery and the Customer shall also be responsible for insurance thereof from the time of such delivery.  
6.2. Alcove shall procure and/or maintain appropriate e-risks, professional indemnity, employer's liability and public liability insurances.

### 7. Guarantees Against Defects

- 7.1. Limited Warranty. Alcove warrants to the Customer that all products it manufactures will be free from defects in material and workmanship for a period of one (1) year from the date of original purchase, provided that such products are installed and used in accordance with supplied product installation instructions. This limited warranty excludes remedy for damage or defect caused by abuse, alterations to the product(s) not executed by Alcove, improper or insufficient maintenance, improper operation and normal wear and tear. Alcove's obligation under the foregoing warranty is limited to the repair or replacement of defective product(s) and does not include reimbursement for the expense of removing the defective product(s), installing the repaired or replacement product(s) or any other damages. In no event shall Alcove be liable for any other losses, claims or damages, whether direct, indirect, incidental, consequential or otherwise, arising from the foregoing warranty.

- 7.2. Alcove shall make good by repair, or at Alcove's option by the supply of replacements, any defects in the Goods, Services and/or the Software which are notified in writing to Alcove during the Warranty Period (as set out in the "Warranty" section of the Alcove Quotation) provided such defects are due to Alcove's faulty materials and/or workmanship or the Goods not being in accordance with the Order.
- 7.3. If the Goods, the Services and/or the Software become defective for any reason other than as set out in Condition 7.1 above, including (but not limited to) accidental damage, failure by or on behalf of the Customer to operate, service or maintain the Goods, the Services and/or the Software in accordance with any operating and maintenance instructions by Alcove and/or any relevant British Standards then such defects will not be covered by this guarantee.
- 7.4. This guarantee excludes fair wear and tear and (without prejudice to Condition 7.2) any improper use, failure of proper maintenance, failure to observe operating instructions, excessive loading, unsuitable environmental conditions, corrosive atmosphere, dust, moisture, electromagnetic disturbances, static discharge or unsuitable materials.
- 7.5. This guarantee shall become void if the Customer or any party on its behalf (other than Alcove) undertakes alterations or repair to the Goods, the Services and/or the Software without Alcove's written consent or if the Customer does not notify Alcove of the defects within a reasonable time of becoming aware of (or when the Customer should reasonably have become aware of) the defect occurring.
- 7.6. If the condition of the Goods, the Services and/or the Software is such as might or would (subject to these Conditions) entitle the Customer to claim damages, to repudiate the Contract or to reject the Goods, the Services and/or the Software, without prejudice to any statutory rights of the Customer to reject the Goods (including any prescribed time periods for doing so) the Customer shall not then do so but shall first ask Alcove to repair or supply satisfactory substitute Goods, Services and/or Software (as applicable) and Alcove shall then be entitled at its option to repair or take back the defective Goods and to supply satisfactory substitute goods/software or perform Services of rectification free of cost and within a reasonable time or to repay the Contract Price in respect of which the complaint is made.
- 7.7. If Alcove does so repair the Goods/Software or supply satisfactory substitute Goods/Software or effect rectification or repayment under Condition 7.5, the Customer shall be bound to accept such repaired or substituted Goods/Software, repayment or rectification and Alcove shall be under no liability in respect of any loss or damage of whatever nature arising from the initial delivery of the defective Goods/Software or from the initial carrying out of the Services or from any delay before the defective Goods are repaired or the substitute Goods/Software are delivered or the repayment or rectification of the Services is effected.

## **8. Liability**

- 8.1. Nothing in this Contract excludes either party's liability for death personal injury or fraudulent misrepresentation or any other matter to the extent that such exclusion or limitation would be unlawful.
- 8.2. Subject to Condition 8.1 under no circumstances shall Alcove be liable whether in contract tort (including negligence) under statute or otherwise for any indirect special or consequential loss or damage of any kind whatsoever including (but not limited to) loss of expected savings, loss of profit, loss of revenue, goodwill or business opportunity, whether or not such loss or damage was reasonably foreseeable or even if Alcove had been advised of the same.
- 8.3. Subject to Condition 8.1 but notwithstanding any other provisions of this Contract Alcove's total liability under or in connection with this Contract whether in contract tort (including negligence) under statute or otherwise will be limited to the Contract Price.

## **9. Retention of Title**

All Goods supplied by Alcove shall be and remain the property of Alcove until the Contract Price has been paid in full and title to the Goods shall only pass upon payment in full of the Contract Price. Where sums are overdue in whole or in part Alcove reserves the right to recover or re-sell the Goods or any of them and may during normal business hours enter upon the Customer's premises (or the Site (if different) at the sole liability of the Customer) by its servants or agents for that purpose. For the avoidance of doubt, neither the Customer nor any end-user shall acquire any ownership rights of title to the Software. The Software shall at all time remain the property of Alcove and shall only be licensed to the Customer (and sub-licensed to the end-user) pursuant to the Licence. The rights of Alcove under this Condition 9 are in addition to and without prejudice to any of its other rights under these Conditions or available by recourse to law.

## **10. General**

- 10.1. Alcove may assign the benefits of this Contract to any third party without the consent of the Customer. Alcove may assign any of its obligations under this Contract to any third party (including subcontracting any part of the Services) subject to the consent of the Customer (such consent not to be unreasonably withheld or delayed). The Customer may not assign any benefits or burdens of this Contract without the express written consent of Alcove.
- 10.2. In the event that any provision or part of a provision of this Contract is held invalid illegal or unenforceable the remainder of the Contract shall remain valid and enforceable.
- 10.3. The parties to this Contract do not intend that any term of this Contract will be enforceable by any person not a party to it by virtue of the Contracts (Rights of Third Parties) Act 1999.

## **11. Jurisdiction and Applicable Law**

The construction, validity and performance of the Contract shall be governed by English Law and any disputes arising out of or in connection with this Contract shall be subject to the exclusive jurisdiction of the English courts