

Cloud Fundamental

T&Cs

Cloud
Fundamental

1. INTERPRETATION

1.1 In these Conditions the following words have the following meanings:

- a. "Buyer" the person(s), firm or company from whom an order to supply Goods is received by the Company;
- b. "Buyer Materials" any documents or other materials and any data or other information provided by the Buyer relating to the Goods and or Services;
- c. "Buyer's Equipment" any equipment, systems, cabling or facilities provided by the Buyer and used directly or indirectly in the supply of the Services;
- d. "Company" CLOUD FUNDAMENTAL LIMITED incorporated and registered in England and Wales with company number 09913911 whose registered office is at 2nd Floor, Stanford Gate, South Road, Brighton. BN1 6SB
- e. "Company Equipment" any equipment including tools, systems, cabling or facilities provided by the Company or its subcontractors and used directly or indirectly in supply of the Services.
- f. "Company Materials" any documents, specifications, designs or other materials, and any data or other information provided by the Company relating to the Goods and/or Services;
- g. "Conditions" the standard terms and conditions of sale as set out in this document;
- h. "Contract" the contract between the Company and the Buyer for the sale and purchase of specific Goods and/or Services;
- i. "Delivery Point" the place where delivery of the Goods is to take place under Condition 4.1;
- j. "Goods" any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them);
- k. "In-put Material" all Documents, information and materials required by the company to be provided by the Buyer relating to the Services including (without limitation), computer programs, data, reports and specifications;
- l. "Services" means installation, support and any other services including the provision of software created by the Company supplied to the Buyer by the Company;
- m. "Supplier" means any supplier of Goods or Services to the Company.

1.2 In these Conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

1.3 In these Conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.

1.4 In these Conditions headings will not affect the construction of these Conditions.

2. APPLICATION OF TERMS

2.1 Subject to any variation under Condition 2.3 the Contract will be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, acceptance of a quotation, specification or other document).

2.2 No terms or conditions endorsed upon, delivered with or contained in the Buyer'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 These Conditions apply to all the Company's sales of Goods and Services and any variation to these Conditions and any representations about the Goods and/or Services shall have no effect unless expressly agreed in writing and signed by a Director of the Company.

2.4 Each order for Goods and/or Services by the Buyer from the Company shall be deemed to be an offer by the Buyer to purchase Goods and/or acquire Services subject to these Conditions and no order shall be accepted until the Company either expressly by giving notice of acceptance, or implicitly by fulfilling the order, or in the case of Services commences performance of those Services in whole or in part accepts the offer.

2.5 The Buyer must ensure that the terms of its order and any applicable specification are complete and accurate.

2.6 Quotations are given by the Company on the basis that no contracts shall come into existence except in accordance with condition 2.4. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.

3. DESCRIPTION

3.1 The description of the Goods and/or Services shall be as set out in the Company's quotation or where applicable Project Plan or Proposal.

3.2 All drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They will not form part of this Contract.

4. BUYER'S OBLIGATIONS

4.1 The Buyer shall:

4.1.1 co-operate with the Company in all matters relating to the Services;

4.1.2 provide the Company, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, with access to the Buyer's premises, office accommodation, data and other facilities as required by the Company;

- 4.1.3 provide to the Company, in a timely manner, such In-put Material and other information as the Company may require and ensure that it is accurate in all material respects;
 - 4.1.4 be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services, including identifying, monitoring, removing and disposing of any hazardous materials from its premises in accordance with all applicable laws, before and during the supply of the Services at those premises, and informing the Company of all of the Buyer's obligations and actions under this condition 7.1.4;
 - 4.1.5 inform the Company of all health and safety rules and regulations and any other reasonable security requirements that apply at the Buyer's premises;
 - 4.1.6 ensure that all Buyer's Equipment is in good working order and suitable for the purposes for which it is used and conforms to all relevant United Kingdom standards or requirements;
 - 4.1.7 obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, the installation of the Company's Equipment, the use of In-put Material and the use of the Buyer's Equipment in relation to the Company's Equipment, in all cases before the date on which the Services are to start;
 - 4.1.8 keep, maintain and insure the Company's Equipment in good condition OR in accordance with the Company's instructions as notified in writing from time to time, and shall not dispose of or use the Company's Equipment other than in accordance with the Company's written instructions or authorisation; and
- 4.2 The Buyer shall not, without the prior written consent of the Company, at any time from the date of the Contract to the expiry of 12 months after the last date of supply of the Services OR termination of the Contract, solicit or entice away from the Company or employ (or attempt to employ) any person who is, or has been, engaged as an employee, consultant or subcontractor of the Company in the provision of the Services.
- 4.3 Any consent given by the Company in accordance with condition 7.1.9 shall be subject to the Buyer paying to the Company a sum equivalent to 110% of the then current annual remuneration and all emoluments of the Company's employee, consultant or subcontractor or, if higher, 110% of the annual remuneration and all emoluments to be paid by the Buyer to that employee, consultant or subcontractor.

5. CONFIDENTIALITY AND THE COMPANY'S PROPERTY

- 5.1 The Buyer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Buyer by the Company, its employees, agents, consultants or subcontractors and any other confidential information concerning the Company's business or its products which the Buyer may obtain.

- 5.2 The Buyer may disclose such information:

5.2.1 to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out the Buyer's obligations under the Contract; and

5.2.2 as may be required by law, court order or any governmental or regulatory authority.

5.3 The Buyer shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with this condition 8.

5.4 The Buyer shall not use any such information for any purpose other than to perform its obligations under the Contract.

6. PRICE

6.1 Unless otherwise agreed by the Company in writing the price for the Goods and/or Services shall be the price set out in the Company's quotation.

6.2 The price for the Services shall be exclusive of any value added tax and all costs or charges in relation to loading, unloading, carriage and insurance all of which amounts the Buyer will pay in addition when it is due to pay for the Goods.

6.3 The Company shall endeavour to ensure the accuracy of the prices quoted to the Buyer but the Company shall have no liability to the Buyer for any errors or omissions in relation to the price of the Goods and/or Services and all prices are subject to alteration without notice to the Buyer. The Company reserves the right to increase its prices where at the request of the Buyer the Company suspends delivery of the Goods and/or the performance of the Services.

7. PAYMENT

7.1 Payment of the price for the Goods and/or Services is due and payable no later than 30 days of the date of the invoice.

7.2 No payment shall be deemed to have been received until the Company has received cleared funds.

7.3 All payments payable to the Company under the Contract shall become due immediately upon termination of this Contract despite any other provision.

7.4 The Buyer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

8. The Company reserves the right to claim interest and fixed sum compensation under the Late Payment of Commercial Debts (Interest) Act 1998.

8.1 If the Buyer fails to pay any sum due, the Company may without prejudice to any other right or remedy interrupt, suspend, or cancel delivery of the Goods and/or performance of the Services to the Buyer. Such interruption, suspension or termination does not relieve the Buyer from paying any amount overdue and payable under the Contract.

- 8.2 The Company may in its absolute discretion assign to any third party any debt outstanding and due from the Buyer without reference to the Buyer.

9. WARRANTIES

- 9.1 The Company warrants that the Services will be carried out by appropriately qualified and trained personnel, in a competent and professional manner with reasonable skill and care, to such standard of quality as it is reasonable for the Buyer to expect in all circumstances.
- 9.2 The Buyer does not rely on any representation, warranty or other provision except as expressly provided in this Contract and any conditions, warranties or other terms implied by statute or common law are excluded from this Contract to the fullest extent permitted by law.
- 9.3 The Buyer must comply with the terms of the Supplier's software licenses.
- 9.4 The Company shall not be liable for any breach of the above warranties (the "Warranty"):
- 9.5 Unless the Buyer has paid to the Company all monies payable on or by the date stipulated for payment;
- 9.6 Unless the Buyer gives written notice of the noncompliance or alleged defect within one week of discovery of the noncompliance or defect or the date when such problems ought reasonably to have been discovered and in any event before the expiration of the warranty period;

10. LIMITATION OF LIABILITY

- 10.1 Subject to Condition 12, the following provisions of this Condition 16 set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Buyer in respect of:
- 10.1.1 any breach of these Conditions; and
- 10.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract
- 10.2 Nothing in these Conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or for fraudulent misrepresentation.
- 10.2.1 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of the specific Contract for the Goods giving rise to the event causing loss or damage shall be limited to the purchase price of those Goods pursuant to the Contract; and
- 10.2.2 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of the specific Contract for the Services giving rise to the event causing loss or damage shall be limited to the purchase price of those Services pursuant to the Contract; and

- 10.2.3 the Company shall not be liable to the Buyer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

11. INTELLECTUAL PROPERTY

- 11.1 The property and any copyright or other intellectual property rights in:-
- 11.2 any Buyer Materials shall belong to the Buyer;
- 11.3 any Company Materials shall, unless otherwise agreed in writing between the Buyer and the Company, belong to the Company, subject only to a licence in favour of the Buyer to use the Company Materials for the purposes of receiving the Goods and/or Services.

12. ASSIGNMENT

- 12.1 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.
- 12.2 The Company may assign the Contract or any part of it to any person, firm or company.

13. FORCE MAJEURE

- 13.1 The Company reserves the right to defer the date of delivery or provision of Services or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable Goods or materials. Provided that, if the event in question continues for a continuous period in excess of 180 days, either party shall be entitled to give immediate notice in writing to the other to terminate the Contract.

14. GENERAL

- 14.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 14.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 14.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.

14.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

14.5 The parties to this Contract do not intend that any term of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

14.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

15. NOTICES

15.1 All notices between the parties about the Contract must be in writing and delivered by hand or sent by pre-paid first class post or sent by email or facsimile transmission to the registered office address of the party in question or such other address as shall be notified by the Company or the Buyer to the other from time to time.

15.2 Notices shall be deemed to have been received:

15.2.1 if sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank and public holidays within the UK) after posting (exclusive of the day of posting);

15.2.2 if delivered by hand, on the day of delivery;

15.2.3 if sent by email or facsimile transmission on a working day prior to 4.00 p.m., at the time of transmission and otherwise on the next working day.