

Terms and Conditions

1. DEFINITION

- 1.1 "Customer" means the party identified as the Customer in this Agreement to whom Sandhill Consultants Limited may agree to supply Products in accordance with these terms and conditions.
- 1.2 "Sandhill" means Sandhill Consultants Limited of St. John's Court, Brewery Hill, Grantham, Lincolnshire, NG31 6DW or any subsidiary or associated company.
- 1.3 "Products" means goods or services including but not limited to computer hardware and software items to be provided by Sandhill to the Customer in accordance with these terms and conditions.
- 1.4 "Term" shall have the meaning given in clause 13.1.
- 1.5 "Third Party Software" means all software owned by or licensed to the Customer from a third-party owner (whether or not supplied by Sandhill) and which comprises part of the Products.

2. ORDER ACCEPTANCE

- 2.1 All orders placed with Sandhill by the Customer for Products shall constitute an offer to Sandhill, under these terms and conditions, subject to availability of the products and to acceptance of the order by Sandhill's authorised representative.
- 2.2 All orders are accepted and Products supplied to these terms and conditions only. No amendment to these terms and conditions will be valid unless confirmed in writing on or after the date hereof by Sandhill's authorised representative.
- 2.3 It is agreed that these terms and conditions prevail over the Customer's terms and conditions of purchase unless these latter terms and conditions are amended by Sandhill in writing and signed by Sandhill.

3. INDEPENDENT CONTRACTOR

The relationship between the Supplier and Customer is that of Independent Contractor. Neither party is the agent of each other, and neither party has any authority to make any contractor make any obligation expressly or impliedly 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

- 4.1 Any time quoted for despatch is to be treated as an estimate only, but despatch may be postponed because of conditions beyond Sandhill's reasonable control, and in no event shall Sandhill be liable for any damages or penalty for delay in despatch or delivery.
- 4.2 Risk shall pass to the Customer at the time the Products are despatched by Sandhill. Sandhill accepts no liability for loss or damage caused by the carrier.
- 4.3 If products have not been received, the Customer must notify Sandhill within 7 days of the date of the invoice. If proof of delivery is required, this must be requested within 14 days of the date of the invoice.

5. CANCELLATION AND RESCHEDULING

Subject to clause 8.2 any request by the Customer for cancellation of any order for the rescheduling of any deliveries will only be considered by Sandhill if made at least 48 hours before despatch of the Products and subject to a reasonable administration charge therefore by Sandhill. The Customer hereby agrees to indemnify Sandhill against all direct loss, costs (including the cost of labour and materials used and overheads incurred), charges and expenses arising out of the order and its cancellation or rescheduling.

6. PRICING

- 6.1 Catalogues, price lists and other advertising literature or material as used by Sandhill 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 Sandhill.
- 6.2 Sandhill gives all prices at the time of the order on an ex works basis and the Customer is liable to pay for transport, packing and insurance.
- 6.3 All quoted or listed prices are based on the cost to Sandhill of supplying the Products to the Customer. If before delivery of the Products there occurs any 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, subject to Sandhill providing at least 72-hours notice to the Customer prior to delivery.
- 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 at the tax point date.

7. PAYMENT TERMS

- 7.1 Invoices will be raised and dated by Sandhill on the date of the despatch of the Products. Unless otherwise specifically requested and agreed, invoices will be payable by the Customer 30 days from the date of the invoice. Payments which are not received when payable will be considered overdue and remain payable by the Customer together with the interest for late payment from the date payable at the rate of 4% per annum above the base rate for the time being of the NatWest Bank plc. Such interest shall accrue on a daily basis and be payable on demand after as well as before judgement.
- 7.2 When all prices, taxes and charges due in respects of the Products and any Product supplied previously to the Customer have been paid in full, title to hardware Products only shall pass to the Customer.
- 7.3 Notwithstanding despatch and the passing of risk in the Products to the Customer pursuant to Clause 4, or any other provision of these conditions, the property of the hardware Products shall not pass to the Customer until Sandhill has received cash or cleared funds payment of the price of the Products and all of the Products agreed to be sold by Sandhill to the Customer for which payment is then due.
- 7.4 Until such time as the property in the Products passes to the Customer, the Customer shall hold the Products as Sandhill's fiduciary agent and bailee, and shall keep the Products properly stored, protected and insured and identified as Sandhill's property. Until that time the Customer shall be entitled to use the products in the ordinary course of its business.
- 7.5 Until such time as the property in the products passes to the Customer (and provided the Products are still in existence and not been resold), Sandhill shall be entitled at any time to require the Products to be delivered to Sandhill and, if the Customer fails to do so forthwith, to enter upon any premises of the customer or any third party where the Products are stored and repossess the Products.
- 7.6 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.
- 7.7 On termination of the Company's power of sale or right to use the Products the Customer will immediately hold the Products to the order of Sandhill.
- 7.8 The Customer shall not be entitled to pledge or in anyway charge by way of security for any indebtedness any of the Products which remain the property of Sandhill, but if the Customer does so, all monies owing by the Customer to Sandhill shall (without prejudice to any other right or remedy of the seller) forthwith become due and payable.
- 7.9 Sandhill reserves the right to cease supplies of Products to the Customer at any time. On such cessation of supplies, Sandhill 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 Sandhill will not be liable in respect of any loss or damage caused by or resulting from any minor variation for whatsoever reason in the manufacturer's specifications or technical data and will not be reasonable for any loss or damage resulting from curtailment or cessation of supply following such variation. Sandhill will use its best endeavours to advise the Customer of any variations 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. Sandhill 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 subject to informing the Customer in advance and in no circumstances will it consider cancellation of such orders or the return of such orders.

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 its sole responsibility to comply with any terms and conditions of licence attaching to Third Party Software supplied and delivered by Sandhill (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. The Customer further agrees to indemnify Sandhill in respect of any costs, charges or expenses incurred by Sandhill at the suit of a Third Party Software owner as a result of any breach by the Customer of such conditions.
- 9.3 NO TITLE OR OWNERSHIP OF SOFTWARE PRODUCTS OR ANY THIRD PARTY SOFTWARE

LICENSED TO THE CUSTOMER UNDER THIS AGREEMENT IS TRANSFERRED TO THE CUSTOMER UNDER ANY CIRCUMSTANCES.

10. RETURNS

- 10.1 Sandhill reserves the right to levy an administration charge in respect of the rotation of Products and returns.
- 10.2 Returns must be made subject to the following:
 - (a) prior authority having been obtained from Sandhill which will be given at Sandhill's sole discretion;
 - (b) within 14 days of the date of the invoice;
 - (c) subject to stock rotation policy;
 - (d) the Products must be properly packed;
 - (e) the Products must be in a saleable condition;
 - (f) the Products must be accompanied by a list;
 - (g) the Product is still covered by warranty (see section 11).
- 10.3 Sandhill reserves the right to reject any Products which do not comply with the conditions set out in clause 10.2.
- 10.4 If Sandhill nevertheless agrees to accept any Products returned which are not in a saleable condition, Sandhill reserves the right to charge the cost to the Customer of bringing the Products into a saleable condition.

11. WARRANTY

- 11.1 Sandhill warrants that it has good title or licence to supply all Products to the Customer.
- 11.2 All software Products supplied hereunder are supplied "as is" and the obligation of Sandhill in connection with the supply of software Products is to, at the Customer's option, (i) obtain and supply a corrected version from the manufacturer; (ii) repair the software Products, or (iii) replace the software Product concerned in the event that such software Product should fail to conform to product description PROVIDED ALWAYS THAT the Customer notifies Sandhill of any such non-conformity within 60 days of the date of delivery of the applicable software Product. Specifically Sandhill cannot accept any liability in relation to any losses, costs or expenses which arise through any difficulty over date changes.
- 11.3 If the Products are rejected by the Customer as not being in accordance with the Customer's order pursuant to clause 11.2 or 11.3, Sandhill will only accept the return of such Products provided that it received written notification thereof giving detailed reasons for rejection Sandhill will not consider any claim for compensation, indemnity or refund under liability, if any, has been established or agreed with the manufacturer and where applicable the insurance company. Under no circumstances shall the invoiced Products be deducted or set off by the Customer until Sandhill has passed a corresponding credit note.
- 11.4 EXCEPT AS SPECIFICALLY SET OUT IN THIS CLAUSE 11, SANDHILL 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. INDEMNITIES AND LIMITS OF LIABILITY

- 12.1 Sandhill will indemnify the Customer for direct physical injury or death caused solely by defects in any of the Products or caused solely by the negligence of its assigned employees acting within the course of their employment and the scope of their authority.
- 12.2 Sandhill will indemnify the Customer for direct damage to property caused solely by defects in any of the Products or caused solely by the negligence of its assigned employees acting within the course of their employment and the scope of their authority. The total liability of Sandhill under this subclause shall be limited for £100,000 for anyone event or series of connected events.
- 12.3 The Customer shall indemnify and defend Sandhill and its employees in respect of any claims by third parties which are occasioned by or arise from any Sandhill performance or non-performance pursuant to the instructions of the Customer or its authorised representative. The total liability of the Customer under this subclause shall be limited to the total price paid by the Customer.
- 12.4 Except as stated in clauses 12.1 to 12.3 above, the parties disclaim and exclude all liability to each other in connection with these terms and conditions including the Customer's use of the Products and in no event shall the parties be liable to each other for special, indirect or consequential damage including but not limited to loss of profits arising from loss of data or in connection with the 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.

13. TERM AND TERMINATION

- 13.1 This agreement shall commence on the date of this agreement and shall continue in force until the first anniversary of the commencement of this agreement unless extended by the Customer for further 12 month periods ("Renewal Period") during which time the Customer shall have the right to terminate this agreement by providing 30 days' notice in writing.

This agreement may be terminated forthwith by notice in writing:

- 13.2 By Sandhill if the customer fails to pay any sums due hereunder by the due date notwithstanding the provisions for late payment as in clause 7.1.
- 13.3 If either party fails to perform any of its obligations under this Agreement and such failure continues for a period of 14 days after written notice thereof, by the other party.
- 13.4 If either party is involved in any legal proceedings concerning its solvency, or cease 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 12.3 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.
- 13.5 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 Sandhill 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 by any applicable government regulations.

15. CONTRACT

- 15.1 The headings in this Agreement are for ease of reference only and shall not affect its interpretation or construction.
- 15.2 No forbearance, delay, indulgence by either party in enforcing its respective rights shall prejudice or restrict the rights of that party and no waiver of any such rights or of any breach of any contractual terms shall be deemed to be a waiver of any other right or any later breach.
- 15.3 The Customer agrees not to assign any of its rights herein without the prior written consent of Sandhill.
- 15.4 In the event of any of these terms and conditions or any part of them being judged illegal or unenforceable for any reason, the continuation in full force and effect of the remainder of them shall not be prejudged.
- 15.5 Neither party shall be liable to the other for any delay in failure to perform its obligations hereunder (other than a payment of money) where such delay or failure results from force major, act of God, fire, explosion, accident, industrial dispute or any cause beyond its reasonable control.
- 15.6 Any documents or notices given hereunder by either party to the other must be in writing and may be delivered personally or by recorded delivery or registered post and in the case of the post will be deemed to have been given 2 working days after the date of posting. Documents or notices shall be delivered or sent to the addresses of the parties on the first page of this Agreement or to any other address notified in the normal course of trading in writing by either party to the other for the purpose of receiving documents or notices after the date of this Agreement.
- 15.7 These terms and conditions shall be construed in accordance with English law. Neither the uniform Law on International Sales nor the Convention on Contracts for the International Sale of Goods shall apply to any Contract.