

1.0 GENERAL

These Terms and Conditions of Sale shall apply to all sale of Goods by ENVITIA LTD., (ENVITIA) and shall be incorporated into any contract for the purchase of Goods by Customer to the exclusion of any other terms or conditions whether written or oral express or implied including whether contained in any of the standard form or other documents of Customer which purport to provide that any terms and conditions of purchase of Customer contained in those documents shall prevail.

The placing of an order with ENVITIA shall constitute acceptance of these Terms and Conditions of Sale. No change of any of their terms and conditions herein shall be valid unless agreed in writing signed by an authorised representative of each party.

2.0 PRICE

Unless otherwise stated in writing Quotations expire 30 days after the date of the quotation. All billings will be at the price indicated in ENVITIA's Acknowledgement of Order and shall be shown exclusive of Value Added Tax and similar taxes. Delivery charges within the UK are included. For goods requiring delivery to an address outside the UK the terms of any shipment are F.O.B.

3.0 DELIVERY

The delivery date specified in a Quotation or Acknowledgement is an estimate only and in the event of ENVITIA's inability to deliver the Goods on or before the delivery date for any reason ENVITIA shall not be liable for any loss or damage suffered by the Customer as a result nor shall this constitute a breach or repudiation of the Contract. Time of delivery shall not be the essence of the Contract.

ENVITIA shall, in its sole discretion, be entitled to deliver Goods by single delivery or by instalments. If ENVITIA elects to deliver in instalments each instalment shall be deemed to be the subject of a separate contract and without prejudice to this clause hereof non-delivery or delay in delivery of any instalment shall not affect the balance of the Contract in question nor entitle Customer to terminate the same.

4.0 RISK OF LOSS

Risk of loss and damage shall pass from ENVITIA to Customer upon delivery of the products to Customer. Goods shall be deemed to have been delivered to Customer complete and undamaged if no claim is received by ENVITIA within 7 days from the date of delivery to Customer.

5.0 TERMS OF PAYMENT

Customer shall pay all invoices for Goods within 30 days from the date of invoice or, if installation is performed by ENVITIA, from the date of completion of installation of Goods. If installation is delayed by Customer for more than 14 days payment shall be due 30 days from the date of invoice.

In the event that any sum due to ENVITIA remains unpaid and after written notice to Customer by ENVITIA interest shall accrue on the sum outstanding at the rate of 3% per month above Barclay Bank base rate ruling from time to time calculated from the due date and to recover its expenses including legal fees and costs of collection.

ENVITIA in its sole discretion shall be entitled to change the payment terms, suspend deliveries or treat the Contract as repudiated if ENVITIA has reason to believe Customer is not sufficiently credit worthy.

6.0 TITLE

Title in Goods shall not pass to Customer until full payment has been received by ENVITIA for such Goods. If the customer fails to pay for Goods when payment is due or if at any time before payment ENVITIA has bona fide doubts as to the solvency of Customer, Goods will be placed at the disposal of ENVITIA which shall be entitled to enter upon Customer's premises for the purposes of removing such Goods.

7.0 VARIATION AND CANCELLATION

If less than 90 days before scheduled delivery, Customer gives notice in writing of a change in order giving rise to a delay in delivery or cancellation of all or part of an order Customer shall be subject to a charge of 6% of the list price of the Goods affected. In addition ENVITIA shall be entitled to reimbursement for any costs incurred in connections with special products or services.

8.0 PATENTS AND COPYRIGHT

Notwithstanding clause 11, ENVITIA agrees to fully indemnify (including all costs and expenses) the Customer and ENVITIA shall defend and settle any suit or proceedings brought against Customer so far as it is based on the allegation that use of Goods furnished hereunder infringes a patent copyright or trademark having effect in the country in which Customer takes delivery of Goods provided that ENVITIA is notified promptly in writing and given all information, assistance and sole authority to defend or settle at ENVITIA's expense. If the Goods are held in such suit to infringe and the use of the Goods enjoined or in the case of a settlement described above, ENVITIA shall have the option at its own expense to procure for Customer the right to continue using the Goods; or replace same with non-infringing Goods; or modify same so it becomes non-infringing; or refund the depreciate value of said product and accept return of same. ENVITIA shall not be obliged to defend or be liable for any infringement which arises out of compliance with Customer's specifications, designs or instructions or from the fault or action of Customer.

9.0 PROPRIETARY RIGHTS

Customer will hold in confidence all information that is designated by ENVITIA as confidential or is of a confidential and proprietary nature relating to the Goods supplied hereunder and shall take reasonable steps to prevent its employees from misusing or disclosing such information to any person outside the Customer organisation.

10.0 SOFTWARE LICENCES

All software provided hereunder is licensed to Customer by ENVITIA pursuant to ENVITIA's Software Licence Agreement and it is understood and agreed that the word "purchase" or similar words or derivatives shall be understood to mean "licence" and "Customer" or any similar words or derivatives shall be understood to mean "Licensee". Title to licensed materials shall remain with ENVITIA notwithstanding anything to the contrary herein.

11.0 LIMITATION OF LIABILITY

Any acceptance of an order by ENVITIA does not constitute a consumer sale and, save as herein provided, all representations, conditions, warranties and terms, whether express or implied by common law, statute or otherwise as to the quality, condition or fitness for any purpose of the Goods provided hereunder are excluded from the contract created by such acceptance.

ENVITIA hereby excludes all liability whatsoever for any direct or indirect damages of any kind. In no event will ENVITIA be liable for consequential damages including but not limited to loss of profits or arising from loss of data or unfitness for the purpose. The limitation of liability contained in this Article shall apply without prejudice to any other limitation or restriction contained in these Terms and Conditions of Sale, whether in respect to the rights or remedies available to Customer or otherwise.

In any event, to the extent allowable in law, ENVITIA's liability under, for breach of, or arising out of these Terms and Conditions of Sale and/or sale, installation of Goods, provision of services, or otherwise shall be limited to (i) refund of the purchase price/licence fee for goods and software purchased and licensed hereunder, or, (ii) in regard to matters arising out of claims of infringement as described in Article 8 above, refund of the purchase price/licence fee only for the specific items of goods or software subject to such claim.

12.0 WARRANTY

Except as stated herein, ENVITIA makes no warranty of any kind, express or implied, with regard to the Goods sold hereunder. ENVITIA warrants that the Goods are of merchantable quality in so far as they will be free from defects in materials or workmanship for a period of ninety (90) days from the date of delivery. This warranty shall be null and void if the Goods have been damaged by accident, misuse or misapplication or have been modified or altered or incorrectly installed by Customer. ENVITIA does not warrant that the operation of the software firmware or hardware shall be uninterrupted or error free. During the warranty period ENVITIA or its designated service representative will repair, or at its option, replace any such Goods. In the event the Goods are not subject to warranty protection because of misuse, lapse of time or other reasons, Customer will be charged for repair or replacement services at ENVITIA's standard rates.

All parts furnished under warranty will be provided on an exchange basis (parts removed under warranty become the property of ENVITIA) and will be new parts or parts performing like new parts. The warranty period on replacement parts provided under warranty shall be thirty (30) days, or the remainder of the warranty period of the Goods that such parts are installed in, whichever is longer.

13.0 TERMINATION

If Customer commits a breach of the contract or is in default of any of his obligations to ENVITIA, or if any distress or execution shall be levied upon Customer's property or assets, or if Customer shall make or offer to make any arrangement or composition with creditors or commit any act of bankruptcy, or if any petition or receiving order in bankruptcy shall be presented or made against it, or if Customer is a limited company and any resolution or petition to wind up such company's business (other than for the purpose of amalgamation or reconstruction) shall be passed or presented, or if a receiver of such company's undertaking, property or assets or any part thereof shall be appointed, ENVITIA shall have the right forthwith by notice in writing to terminate any contract then subsisting between Customer and ENVITIA and Customer shall indemnify ENVITIA against all loss and damage thereby suffered by it. Termination of a particular contract for the supply of Goods shall not affect the accrued rights of the parties arising in any way out of such contract as at the date of termination. ENVITIA shall not be liable to Customer for damages of any kind on account of termination of any portion of the sale of Goods hereunder for any reason whatsoever.

14.0 EXPORT REGULATIONS

The Customer agrees that any Software purchased through ENVITIA will not be exported either directly or indirectly to any country in contravention of the United Kingdom Government or United States Government regulations in force at that time.

15.0 MISCELLANEOUS

15.1 No clerical error in any document relating to any order shall entitle the Customer to reject the Goods which are subject to such order.

15.2 The benefit of this contract shall not be assigned by Customer without the prior written consent of ENVITIA. ENVITIA shall have the right to assign to any affiliated company all rights, powers, duties and obligations under this contract without the Customers consent in which event references herein to the company shall be deemed to be reference to such other company or companies.

15.3 These Terms and Conditions of sale are written in the English language and the construction validity and performance hereof shall be governed by English law. All disputes between the parties relating to any matter arising out of the performance of their obligation under a contract incorporating these Terms and Conditions of sale or the construction thereof shall be subject to the jurisdiction of the English Courts to which the parties agree to submit.

15.4 These conditions constitute the entire understanding of the parties and there are no representations promises warranties conditions, duties or other obligations whether oral or written express or implied other than those contained or referred to herein and no amendment to these Conditions shall be valid unless in writing signed by both parties.

15.5 If any provision, provisions or any portions of any provisions, of these Terms and Conditions of Sale shall be held to be invalid, illegal or unenforceable, the remaining provisions or portions of any provisions shall be valid and enforceable to the extent possible, provided that in such event the parties agree to negotiate in good faith substitute enforceable provisions which most nearly effect the parties, intent in entering into these Terms and Conditions of Sale.

15.6 All notices or written communications shall be deemed to be delivered to Customer two days after the date of posting, addressed to Customer at the last address of Customer known to ENVITIA.

15.7 Customer warrants that Customer has full power and authority to enter into and perform these Terms and Conditions of Sale. Customer further acknowledges reading and understanding these Terms and Conditions of Sale, and agrees to be bound by them.