

SAPPHIRE TECHNOLOGIES LIMITED

TECHNOLOGY SELECTION & IMPLEMENTATION SERVICES SUPPLEMENTAL TERMS AND CONDITIONS

1. YOUR OBLIGATIONS

1.1 You shall:

- 1.1.1 follow all Our reasonable instructions in respect of the System

2. OUR OBLIGATIONS

- 2.1 We shall use reasonable endeavours to manage and complete the Project, and to deliver the Deliverables, in accordance in all material respects with the Quotation.

We shall use reasonable endeavours to meet the performance dates specified in the Quotation, but any such dates shall be estimates only and time shall not be of the essence of the Contract.

3. GOODS

- 3.1 The Goods are described in the Quotation.

- 3.2 To the extent that the Goods are to be designed, programmed or created in accordance with a specification You supply, You shall indemnify Us against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by Us in connection with any claim made against Us for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Our use of the specification provided. This clause 3.2 shall survive termination of the Contract.

We reserve the right to amend the specification of the Goods if required by any Applicable Laws or Requirements.

4. DELIVERY OF GOODS

- 4.1 We shall use Our reasonable endeavours to ensure that:

- 4.1.1 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all of Your and Our relevant reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- 4.1.2 if We require You to return any packaging material to Us, that fact is clearly stated on the delivery note. You shall make any such packaging materials available for collection at such times as We shall reasonably request. Returns of packaging materials shall be at Our expense.

- 4.2 We shall deliver (and install where specified in the Quotation) the Goods to the location set out in the Quotation or such other location as the parties may agree ("**Delivery Location**") at any time after We notify You that the Goods are ready.
- 4.3 Delivery of the Goods shall be completed on arrival of the Goods at the Delivery Location.
- 4.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. We shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or Your failure to provide Us with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 If You fail to accept or take delivery of the Goods within seven (7) Business Days of Our notifying You that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by Our failure to comply with Our obligations under the Contract in respect of the Goods:
- 4.5.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the eighth (8th) Business Day following the day on which We notified You that the Goods were ready; and
- 4.5.2 We shall store the Goods until delivery takes place, and charge You for all related costs and expenses (including insurance), if any are incurred.

We may deliver the Goods by instalments. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle You to cancel any other instalment.

5. QUALITY OF GOODS

- 5.1 We warrant that on delivery, the Goods shall:
- 5.1.1 conform in all material respects with their description; and
- 5.1.2 be free from material defects in design, material and workmanship.
- 5.2 Subject to clause 5.3, in the case of physical Goods, if:
- 5.2.1 You give written notice within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- 5.2.2 We are given a reasonable opportunity of examining such Goods; and
- 5.2.3 You (if asked by Us to do so) returns such Goods to Our place of business at Your cost, if applicable
- We shall, at Our option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 5.3 We shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:
- 5.3.1 You make any further use of such Goods after giving a notice in accordance with clause 5.2.1;

- 5.3.2 the defect arises because You failed to follow Our oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
- 5.3.3 the defect arises as a result of Our following any drawing, design or Goods Specification You supply;
- 5.3.4 You alter or repair such Goods without Our express prior written consent;
- 5.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
- 5.3.6 the Goods differ from their description or the Quotation as a result of changes made to ensure they comply with Applicable Law or Regulation;
- 5.3.7 the failure in the Goods arises from:
 - (a) the installation by a third party which has been improperly carried out;
 - (b) inadequacies of the System.

These terms shall apply to any repaired or replacement Goods supplied by Us under clause 5.2.

6. TITLE AND RISK

- 6.1 The risk in the Goods shall pass to You on delivery.
- 6.2 Title to the Goods shall not pass to You until the earlier of:
 - 6.2.1 We receive payment in full (in cash or cleared funds) for the Goods and any other goods that We have supplied to You in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and
- 6.3 Until title to the Goods has passed to You, You shall:
 - 6.3.1 store the Goods separately from all other goods held by You so that they remain readily identifiable as Our property;
 - 6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 6.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Our behalf from the date of delivery;
 - 6.3.4 notify Us immediately if You become subject to any Insolvency Event or any other events listed in our main terms and conditions.
 - 6.3.5 give Us such information relating to the Goods as We may require from time to time;
 - 6.3.6 not install the Goods anywhere other than on the System.

- 6.4 Subject to clause 6.5, You may use the Goods in the ordinary course of Your business (but not otherwise) before We receives payment for the Goods.
- 6.5 If before title to the Goods passes to You, You becomes subject to an Insolvency Event or any of the events listed in our main terms and conditions, without limiting any other right or remedy We may have:
- 6.5.1 You right to resell Goods or use them in the ordinary course of its business ceases immediately; and
 - 6.5.2 We may at any time:
 - (a) require You to deliver up all Goods in Your possession which have not been resold, or irrevocably incorporated into another product; and
 - (b) if You fail to do so promptly, enter any premises of You or of any third party where the Goods are stored in order to recover them.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 All Intellectual Property Rights and all other rights in the Deliverables shall be owned by Us. We hereby license all such rights to You free of charge and on a non-exclusive, worldwide basis to such extent only as is necessary to enable You to make reasonable use of the Deliverables the Goods and the Services as is envisaged by a Contract. If the Contract ends, such licence will automatically terminate.
- 7.2 You acknowledge that Your use of rights in Pre-existing Materials is conditional on Us obtaining a written end-user licence (or sub-licence) of such rights from the relevant licensor or licensors on such terms as will entitle Us to license such rights to You.
- 7.3 You acknowledge that all Intellectual Property Rights in the Goods shall be owned by Us or the Partner Providers and You undertake to comply with the terms of any Partner Provider terms and conditions or licence and shall indemnify and keep indemnified Us for all losses, liability, claim, penalty, demand or award arising directly or indirectly from for any breach of this clause 7.

8. LIMITATION OF LIABILITY

- 8.1 If We fail to deliver the Goods, Our liability shall be limited to the reasonable costs and expenses You incur in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. We shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or Your failure to provide Us with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 8.2 Except as provided in clause 5.2, We shall have no liability to You in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 8.3 Our total liability in contract, tort (including negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price paid and received by Us in respect of the relevant Order for the Services to which the claim relates.

- 8.4 You acknowledge and agree that to the extent that the Services entail activities to be undertaken by Us (including Our officers, employees, agents, consultants and representatives) which are in contravention of the Computer Misuse Act 1990 (and its subsequent amendments), You hereby provide consent for such activities and shall indemnify and keep Us indemnified (and Our officers, employees, agents, consultants and representatives) on a £1 for £1 basis for any direct or indirect loss, liability, cost, claim award or penalty incurred in carrying out such activities howsoever arising.

9. CHARGES AND PAYMENT

- 9.1 Where the Goods and/or Services are provided the total price for the Goods and Services shall be the amount set out in the Quotation. The total price shall be paid to Us in instalments as set out in the Quotation. We may on delivery of the Goods or Completion of the Services invoice You for the Charges that are then payable, together with expenses and the costs of materials (and VAT, where appropriate), calculated as provided in clause 9.2 but We reserve the right to raise interim invoices at any time during the supply of Goods and/or Services.

- 9.2 [Any fixed price contained in the Quotation excludes:

9.2.1 the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the project team in connection with the Services, and the cost of any materials or services reasonably and properly provided by third parties required by Us for the supply of the Services. Such expenses, materials and third party services shall be invoiced by Us; and

9.2.2 VAT, which We shall add to Our invoices at the appropriate rate.]

- 9.3 You shall pay each invoice submitted to You by Us within 30 days of the date of the invoice.

- 9.4 Without prejudice to any other right or remedy that We may have, if You fail to pay Us on the due date We may suspend the delivery of Goods and provision of all Services until payment has been made in full.

10. SUPPLEMENTAL SUPPLY OF SOFTWARE, INSTALLATION AND CONSULTANCY SERVICES DEFINITIONS

- 10.1 The definitions in this clause apply in relation to the Contract in relation to the Software, Installation and Consultancy Services.

Deliverables	all products and materials We develop in relation to the Project in any media, including computer programs, data, diagrams, reports and specifications (including drafts) but excluding the Pre-existing Materials;
Goods	the software and any other goods or any part of them set out in the Quotation
Order	Your order or other request for Software, Installation and Consultancy Services that is

	issued by You and received by Us (including signing and returning to Us a Cover Sheet).
Partner Provider	the provider, manufacturer, developer or designer of Goods We supply.
Pre-existing Materials	materials which existed before the commencement of the Project.
Project	The delivery of the Goods and/or Services and otherwise the project as described in the Quotation.
Quotation	the detailed plan describing the Project and setting out the estimated timetable (including without limitation Project Milestones) and responsibilities for the provision of the Services by Us in accordance with the Contract.