

TERMS AND CONDITIONS OF SALE AND SERVICE

1. DEFINITIONS

“**Company**” means Midland Computer Services Limited of 6B Sallow Road, Weldon North Industrial Estate, Corby, Northants. NN17 5JX.

“**Contract**” means the contract between the Company and the Customer for the supply of the Goods or Services incorporating these terms and conditions.

“**Customer**” means the person, firm or company who purchases Goods or Services from the Company.

“**Goods**” means all goods agreed in the Contract to be supplied to the Customer by the Company including replacements for defective goods and software products licensed for use by the Customer.

“**Liabilities**” means all losses, damages, penalties, fines, costs and expenses (including any incurred as a result of any claims or proceedings being made by a third party).

“**Services**” means all services agreed in the Contract to be supplied to the Customer by the Company including all internet and related services.

2. ACKNOWLEDGEMENT

- (a) All orders which are accepted by the Company will be subject to and in accordance with these terms and conditions which shall be deemed to be incorporated into the Contract.
- (b) No terms or conditions endorsed upon, delivered with or contained in the Customer’s purchase order, confirmation of order, specification or other document will form part of the Contract.
- (c) No variation to these terms and conditions or any representations about the Goods or Services shall have any effect unless expressly agreed in writing and signed on behalf of the Company. Nothing in this clause however will exclude or limit any liability of the Company for fraudulent misrepresentation.
- (d) Each order for Goods or Services by the Customer shall be deemed to be an offer by the Customer to purchase Goods or Services from the Company. No order placed by the Customer shall be deemed to be accepted by the Company until it issues a written acknowledgement of order or (if earlier) it delivers the Goods or supplies the Services to the Customer.

3. QUOTATIONS

Quotations will remain valid for 7 days from the date of quotation.

4. DESCRIPTION

- (a) Unless otherwise stated by the Company in writing all Goods supplied under the Contract will be refurbished goods.
- (b) All drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in its catalogues or brochures are issued or published for the sole purpose of giving an appropriate idea of the Goods or Services described in them. They will not form part of this Contract.

5. VAT

All prices are subject to VAT at the current rate prevailing at the time of delivery of the Goods or completion of the Services.

6. PAYMENT TERMS

- (a) Other than with the prior written agreement of the Company, payment of the purchase price is due in full upon receipt of the order from the Customer. Time for payment shall be of the essence.
- (b) If the purchase price is over £5,000 and the Customer elects to pay it by credit card then the Company will impose a surcharge of 2% of the total purchase price.
- (c) If the Customer fails to pay any sum due pursuant to the Contract then (without prejudice to the Company’s other rights) the Customer will be liable to pay interest to the Company on such sum from the due date for payment until the date of payment at the rate of 4% per annum above the base lending rate of Barclays Bank plc from time to time. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- (d) The Company reserves the right to charge for copy invoices or credit notes at the rate of £1 per copy where the original has been lost or misplaced by the Customer.
- (e) If legal action is taken against the Customer to recover monies due to the Company, then the Company reserves the right to charge the Customer an administration charge plus the cost of such legal action. The administration charge will be 10% of the total amount claimed or £50 (whichever is the greater) for amounts up to £1,000 and 5% of the total amount claimed for amounts over £1,000.
- (f) The Customer shall make all payments due under the Contract without any deduction whether by way of set off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction, to be paid by the Company to the Customer.

7. NEW ACCOUNTS

A Customer wishing to open a credit account must fully complete and return a Company credit application form. The Company reserves the right in its absolute discretion to grant, refuse or discontinue any credit facilities at any time.

8. GUARANTEE OF GOODS

- (a) All Goods supplied by the Company are supplied with either a manufacturer's guarantee or a Company guarantee. If the Goods are supplied with a manufacturer's guarantee then no guarantee will be given by the Company. It is the Customer's responsibility to check at the time of ordering the Goods whether the Goods are covered by a manufacturer's guarantee or a Company guarantee. The guarantees vary in their duration.
- (b) With the exception of the guarantees referred to in clause (a) above and the express provisions contained in these terms and conditions no warranty, guarantee, condition or representation is given by the Company as to the state, quality, condition, fitness for purpose, performance, standards, workmanship or otherwise of the Goods and all such warranties, guarantees, conditions or representations including any implied by statute or common law (except for the condition implied by Section 12 of the Sale of Goods Act 1979) are to the fullest extent permitted by law, excluded from the Contract.
- (c) The terms of clause 8(b) will not apply where the Customer is dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) and in such a case the statutory rights of the Customer are not affected by these terms and conditions.
- (d) Where the Goods are supplied with a Company guarantee then if any of the Goods are or become defective within the warranty period specified by the Company due to faulty materials, workmanship or design then the Company undertakes at its option to either repair or replace the Goods (or the relevant part thereof) free of charge or refund the price of the Goods.
- (e) The guarantee provided by the Company will not apply:-
- (i) Unless the Customer gives written notice of the defect to the Company within 3 days of the time when it discovered or ought to have discovered the defect and the Company is given a reasonable opportunity after receiving the notice of examining the Goods;
 - (ii) Unless the Customer (if requested) at its expense returns the defective Goods (or defective part thereof) to the Company's premises together with a document in writing stating the date of purchase and the original invoice number;
 - (iii) If the defect has arisen because the Customer failed to follow the Company's or the manufacturer's instructions as to the storage, installation, use or maintenance of the Goods or (if there are none) good trade practice;
 - (iv) If in the Company's reasonable opinion the Goods have been subjected to undue wear and tear, accident, misuse, improper application or neglect.
- (f) Except as otherwise stated in these terms and conditions the Company will have no liability to the Customer whatsoever for any Liabilities incurred by the Customer arising from any defect in the Goods except for its obligations under paragraph (a) above where the Goods are supplied with a Company guarantee.
- (g) Any Goods which are replaced under a Company guarantee will belong to the Company and any repaired or replacement Goods will remain subject to that guarantee for the unexpired portion of the original warranty period.

9. RETURNS

- (a) No order which has been issued by the Customer and accepted by the Company may be cancelled either before or after delivery of the Goods or commencement of the Services without the written agreement of the Company which may be withheld or granted on such terms as the Company may in its discretion decide.
- (b) If the Company does agree to the cancellation of an order after the Goods have been delivered then the Customer will at its expense return the Goods to the Company's premises and the Customer will pay a restocking charge of 30% of the price of the Goods.

10. DELIVERY

- (a) The Company will use its reasonable endeavours to deliver the Goods or complete the Services in accordance with the delivery/completion schedules agreed with the Customer. Such schedules are however intended to be estimates only and time of delivery or completion shall not be made of the essence by notice.
- (b) The Company will not be liable for any Liabilities incurred or suffered by the Customer arising from any delay in delivery of the Goods or completion of the Services even if the delay is caused by the negligence of the Company.
- (c) If for any reason the Customer will not accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:-
- (i) Risk in the Goods will pass to the Customer;
 - (ii) The Goods will be deemed to have been delivered; and
 - (iii) The Company may store the Goods until delivery whereupon the Customer will be liable for all related costs and expenses (including storage and insurance).

11. RISK

The Goods are at the risk of the Customer from the time of delivery.

12. OWNERSHIP

- (a) Ownership of the Goods will not pass to the Customer until the Company has received in full all sums due to it in respect of the Goods and all other sums which are or which become due to the Company from the Customer on any account.
- (b) Until ownership of the Goods has passed to the Customer, the Customer must:-
- (i) Hold the Goods on a fiduciary basis as the bailee of the Company;
 - (ii) Store the Goods in such a way that they remain readily identifiable as the property of the Company;
 - (iii) Maintain the Goods in a satisfactory condition and keep them insured on behalf of the Company for their full risk against normal insurable risks.
 - (iv) Hold the proceeds of any such insurance on trust for the Company and not mix them with any other money.

- (c) The Customer may resell the Goods before ownership has passed to it solely on the following conditions:-
- (i) any sale shall be effected in the ordinary course of the Customer's business at full market value; and
 - (ii) any such sale shall be a sale of the Company's property and the Customer shall deal as the Company's agent and owe a fiduciary duty to the Company in relation to such sale; and
 - (iii) the Customer shall hold such part of the proceeds of sale as represent the amount owed by the Customer to the Company on behalf of the Company and the Customer shall account to the Company accordingly.
- (d) The Customer's right to possession of the Goods shall terminate immediately if:-
- (i) any payments due from the Customer to the Company under the Contract are not paid on the due date; or
 - (ii) the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors or (being a body corporate) convenes a meeting of creditors (whether formal or informal) or enters into liquidation (whether voluntary or compulsory) or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Customer or for the granting of an administrative order in respect of the Customer or any proceedings are commenced relating to the insolvency of the Customer;
 - (iii) the Customer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it or fails to observe or perform any of its obligations under the Contract or any other contract between the Company and the Customer or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or
 - (iv) the Customer encumbers or in any way charges any of the Goods.
- (e) The Customer grants to the Company its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them or where the Customer's right to possession has terminated, to recover them.

13. LIMITATION OF LIABILITY

(a) Subject to clause (b) below:-

- (i) The Company's total liability to the Customer in contract, tort (including negligence or breach of statutory duty) misrepresentation, restitution or otherwise for any Liabilities incurred by the Customer arising from or in connection with the supply of the Goods or Services under the Contract shall be limited to the total price payable by the Customer to the Company for the Goods or Services under the Contract.
- (ii) The Company shall not be liable to the Customer 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 (however caused) which arise out of or in connection with the Contract.

(b) Nothing in these terms and conditions excludes or limits the liability of the Company for death or personal injury caused by its negligence or fraudulent misrepresentation.

14. TERMINATION

If any of the circumstances occur as specified in clause 12(d) above then without limiting any other right or remedy available, the Company may cancel the Contract or suspend any further deliveries of Goods or performance of Services under the Contract without any liability to the Customer.

15. ASSIGNMENT

- (a) The Customer shall not be entitled to assign the Contract without the prior consent of the Company.
- (b) The Company may assign the Contract to any person, firm or company.

16. FORCE MAJEURE

The Company reserves the right to defer the date of delivery of the Goods or the date of commencement or completion of the Services or to cancel the Contract (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond its reasonable control including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, riot, civil commotion, fire, flood, strikes, delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials provided that, if the event in question continues for a continuous period in excess of 60 days, either party shall be entitled to give notice in writing to the other party to terminate the Contract.

17. GENERAL

- (a) 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.
- (b) Any waiver by the Company of any breach of or any default under any provision of the Contract by the Customer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- (c) 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.
- (d) 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. over £1,000.
- (f) The Customer shall make all payments due under the Contract without any deduction whether by way of set off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction, to be paid by the Company to the Customer.