

PART VII

STANDARD TERMS AND CONDITIONS

1. *Application*

1.1 These Conditions shall govern and be incorporated into every contract for the supply of hardware or software or the provision of Services including but not limited to Professional Services, maintenance or other Support Services made by or on behalf of the Seller with any customer (the "Buyer"). They shall apply in place of and prevail over any terms or Conditions contained or referred to in any documentation submitted by the Buyer whether before or following the date of this Agreement or in correspondence or elsewhere or implied by trade customs, practice or course of dealing unless specifically excluded or varied in writing by a director or other authorised representative of the Seller and any purported provisions to the contrary are hereby excluded and have no effect.

1.2 Acceptance by the Buyer of delivery of the Software or Hardware shall, without prejudice to any other manner in which acceptance of these Conditions may be evidenced, be deemed to constitute unqualified acceptance of these Conditions.

1.3 If subsequent to any contract of sale or for the supply of goods or services which is subject to these Conditions, a contract for the sale or the supply of goods or services is made with the same buyer without reference to any Conditions of sale, purchase or supply, such contract howsoever made shall be deemed to be subject to these Conditions.

2. *Prices*

Unless specified otherwise any VAT and other sales tax or duties which are applicable shall be added to the price and paid by the Buyer in addition to the price.

3. *Terms Of Payment*

3.1 Payment of invoices shall, except where specified otherwise in preceding Parts and Schedules to Parts of this Agreement be made in full within thirty (30) days of the date of the Seller's invoice. Time of payment shall be of the essence in respect of all the contracts entered into between the Buyer and the Seller to which these Conditions apply. The Seller reserves the right to suspend the provision or continued operation of Software, Hardware or Services to the Buyer where any amounts are overdue under any contract with the Buyer until all such amounts have been paid in full. The Buyer shall not be entitled to withhold payment of any amount due to the Seller by reason of any set-off, counterclaim, abatement or analogous deduction.

3.2 Interest shall be payable on overdue accounts at a rate of 8% per annum over the base rate of HSBC Bank Plc from time to time from the due date for payment until receipt by the Seller of the full amount and shall accrue at such rate after as well as before any judgement.

3.3 Notwithstanding any purported contrary apportionment by the Buyer all payments made by the Buyer to the Seller shall be apportioned as the Seller in its absolute discretion sees fit.

3.4 The Seller draws particular attention of the Buyer to the provisions of the Late Payment of Commercial Debts Regulations (August 2002) and the policy of the Seller to exercise automatically the right to charge interest and compensation for debt recovery costs on a monthly basis if we are not paid according to the credit terms defined in this agreement.

4. Delivery of Software and/or Hardware

4.1 The Seller shall not be obliged to order the Third Party Software or Hardware from its relevant supplier until it has received payment in full therefore from the Buyer. Delivery or despatch dates mentioned in any quotation, order acceptance form or elsewhere are approximate only and the Seller shall not be under any liability to the Buyer in respect to any failure to deliver on any particular date, provided that delivery takes place within six weeks of the date scheduled for delivery and the Seller continues to use reasonable endeavours to deliver as soon as possible.

4.2 The place of delivery shall be at the Seller's premises at Globe House The Gullet Nantwich Cheshire CW5 5RT unless otherwise stipulated or agreed by the Seller.

4.3 The Seller may, if requested by the Buyer, arrange for carriage of the Software and/or Hardware to the Buyer's address. The costs of carriage and any insurance which the Buyer reasonably directs the Seller to incur shall be due on the date for payment of the price. The carrier shall be deemed to be the agent of the Buyer.

4.4 If the Buyer refuses or fails to take delivery of Software or Hardware tendered in accordance with this Agreement or fails to take any action necessary on its part for delivery and/or shipment of the Software and without prejudice to any of the Seller's rights and remedies hereunder, the Seller

shall be entitled to terminate this Agreement with immediate effect, to dispose of the Software and/or Hardware as the Seller may determine, and to recover from the Buyer any loss and additional costs incurred as a result of such refusal or failure (including, without limitation, storage costs from the due date of delivery).

4.5 Section 32(2) of the Sale of Goods Act 1979 (as amended) shall not apply. The Seller shall not be required to give the Buyer the notice specified in section 32(2) of that Act.

4.6 The Buyer must inspect the Hardware and/or Software immediately upon receipt and must notify the Seller of any defects or shortages. The Buyer shall be deemed to have accepted the Software and/or Hardware [3] Working Days after delivery to the Buyer.

4.7 Subject to the provisions of Conditions 7.3 and 7.4 and Part II Clause 5, after acceptance the Buyer shall not be entitled to reject Software and/or Hardware which are not in accordance with the terms of this Agreement.

5. Intellectual Property Rights

All Intellectual Property Rights of whatsoever nature in all computer programs, documentation and other materials developed by the Seller under or in connection with this Agreement (including any addition amendment enhancement or other change to an existing computer program) will vest in and will remain the absolute property of the Seller. All Intellectual Property Rights in any Third Party Software will remain vested in the relevant Licensor. Upon acceptance of any Software this Agreement will operate to grant a non-exclusive non-transferable licence to the Buyer to use the Software for its own business purposes in accordance with Part III, Clause 5 and Schedule A.

6. Support

The Seller may provide support and maintenance Services in relation to the Software and/or Hardware as separately agreed in writing in Parts II-VI.

7. Warranties and Liabilities

7.1 The Seller warrants that the Services referred to in Condition 6 shall be provided with reasonable care and skill.

7.2 The Seller warrants that software extensions and customisations which the Seller has agreed to prepare on behalf of the Buyer in accordance with Part III shall perform substantially in accordance with the relevant Specification for a period of [60] days from the date of delivery. The Seller's liability under this warranty shall be limited to using reasonable endeavours to remedy a breach free of charge as soon as reasonably possible on receiving written notice of the breach.

7.3 Where the Seller supplies Hardware or Third Party Software, to the extent that the Seller has received any warranties in respect of the Hardware or Third Party Software from the person from whom the Seller bought the Hardware or Third Party Software, the Seller will (in so far as it is able) pass the benefit of such warranties to the Buyer. Otherwise, the Seller does not provide any warranty and shall have no liability to the Buyer in respect of the Hardware or Third Party Software.

7.4 THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES REPRESENTATIONS AND CONDITIONS, EXPRESS OR IMPLIED, WHICH ARE EXPRESSLY EXCLUDED SO FAR AS IS PERMITTED BY LAW.

7.5 THE SELLER SHALL NOT BE LIABLE FOR ANY DAMAGES SUFFERED BY THE BUYER AS A

RESULT OF FOLLOWING THE SELLER'S ADVICE REGARDING THE USE OF ANY FUNCTIONS OF THE SOFTWARE OR HARDWARE.

7.6 IN NO EVENT SHALL THE SELLER BE LIABLE FOR ANY FORM OF SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, LOSS OF DATA, LOSS OF GOODWILL, LOSS OF PROFITS, LOSS OF TURNOVER, COSTS OR EXPENSES EVEN IF THE SAME WAS CONTEMPLATED BY THE PARTIES AT THE TIME THE CONTRACT WAS MADE.

7.7 SUBJECT TO CONDITION 7.8, IN NO EVENT SHALL THE SELLER'S CUMULATIVE LIABILITY HEREUNDER FROM ALL CAUSES OF ACTION OF ANY KIND WHETHER IN CONTRACT OR IN TORT EXCEED:

(A) IN THE CASE OF CAUSES OF ACTION RELATING TO THE SOFTWARE, 125% OF THE PRICE (EXCLUDING VAT) PAID IN FULL BY THE BUYER FOR THE SOFTWARE:

(B) IN THE CASE OF CAUSES OF ACTION RELATING TO THE HARDWARE, 125% OF THE PRICE (EXCLUDING VAT) PAID IN FULL FOR THE HARDWARE: AND

(C) IN THE CASE OF CAUSES OF ACTION RELATING TO THE SERVICES, 125% OF THE CHARGES (EXCLUDING VAT) PAID IN FULL BY THE BUYER FOR THE SERVICES IN ANY PRECEDING 12 MONTH PERIOD.

(D) IN THE CASE OF CAUSES OF ACTION PROVEN TO RELATE TO MORE THAN ONE OF THE CLASSES IN A-C ABOVE, THE SUM OF £75,000 IF THIS BE GREATER AND THE BUYER HAS TAKEN ALL APPROPRIATE ACTIONS TO MITIGATE LOSSES.

7.8 Nothing in these Conditions shall be constructed as limiting or excluding the Seller's liability for death or personal injury caused by its or its employees' negligence.

7.9 The Buyer acknowledges and agrees that the allocation of risk contained in this Condition 7 is reflected in the price and is also a recognition of the fact that it is not within the Seller's control how and for what purpose the Software and/or Hardware are used by the Buyer.

8. **Risk**

8.1 Risk for Software and/or Hardware shall pass on delivery.

8.2 From the time of delivery until property in the Hardware and the Media passes to the Buyer in accordance with Condition 9 the Buyer shall insure and keep insured the Media and the Hardware to the full re-instatement value against all normal insurable risks with fully comprehensive insurance cover to the reasonable satisfaction of the Seller with a reputable insurance office. Upon request, the Buyer shall use reasonable endeavours to have the Seller's interest in the Media and the Hardware noted on the insurance policy. Until property in the Media and the Hardware passes to the Buyer, the Buyer shall hold the proceeds of any claim on such insurance policy on trust for the Seller and shall forthwith account to the Seller with such proceeds. Without prejudice to the other rights of the Seller if the Buyer fails to comply with any of the provisions of this Condition 8 all sums whatsoever owing by the Buyer to the Seller shall forthwith become due and payable.

9. **Title**

9.1 In spite of delivery having been made, property in the Media and/or Hardware shall not pass from the Seller until:

9.1.1 the Buyer shall have paid the price in full together with VAT and other applicable sales tax; and

9.1.2 such time as no other sums whatsoever shall be due from the Buyer to the Seller.

9.2 Until property in the Media and/or Hardware passes to the Buyer in accordance with Condition 9.1 the Buyer shall hold the Media and/or Hardware on a fiduciary basis as bailee for the Seller. The Buyer shall store the Media and/or Hardware (at no cost to the Seller) separately from all other Media and/or Hardware in its possession and marked in such a way that they are clearly identified as the Seller's property.

9.3 The Seller shall be able to recover the price (plus VAT and other applicable sales tax) notwithstanding the fact that property in the Media and/or Hardware has not passed from the Seller.

9.4 The Buyer shall not pledge or in any way charge by way of security for any indebtedness the Media and/or Hardware which are the property of the Seller. Without prejudice to the other rights or remedies of the Seller if the Buyer does so all sums whatsoever owing by the Buyer to the Seller shall forthwith become due and payable.

9.5 The Buyer shall not sell or agree to sell or otherwise dispose of the Media and/or Hardware nor will the Buyer grant any third party any rights or licence to use the Media and/or Hardware without the prior consent in writing of the Seller.

9.6 The Buyer agrees with the Seller that it will at all times repair the Media and/or Hardware and keep the Media and/or Hardware in good and substantial repair and maintained to the satisfaction of the Seller.

9.7 Until such time as property in the Media and/or Hardware passes from the Seller the Buyer shall upon request deliver up the Media and/or Hardware to the Seller. If the Buyer fails to do so the Seller may enter (or after giving reasonable prior notice during the Buyer's absence may break and enter) upon any premises owned occupied or under the control of the Buyer where the Media and/or Hardware are situated and repossess the Media and/or Hardware.

9.8 For the avoidance of doubt, title to the Intellectual Property Rights in the Software shall at no time pass to the Buyer, but shall at all times remain vested in the Seller or the third party proprietor (as applicable).

10. Non-Solicitation

10.1 Neither the Seller nor the Buyer shall solicit in any way the services of or offer to employ any employee or sub-contractor of the other party (or any person who has been such an employee or sub-contractor during the previous year) who is or has been engaged carrying out the Buyer's or the Seller's obligations under this Agreement, nor shall either party actually employ or contract with such an employee or sub-contractor without the written consent of the other party, during the period commencing on the date on which Services subject to these Conditions are ordered by the Buyer and ending six months after the later of (a) the date on which such Services are completed and (b) the date on which such employee or sub-contractor ceases to be employed by or contracted to the Seller.

10.2 In the event that either party employs or uses the Services of any employee or sub-contractor (the "former employee") as described above, it will pay forthwith to the other party without prejudice to any rights or remedies of the other party liquidated damages of an

amount equal to the sum produced by the following formula:

$$(A-B) \times C$$

Where:

A = the daily rate which the former employer could reasonably expect to charge a customer for the Services of the former employee and

B = the daily cost to the former employer of using the Services of the former employee; and

C = the number of Working Days on which the former employee is employed or sub-contracted to the new employer during the period to which Condition 10.1 applies it being acknowledged that in view of recruitment difficulties and costs in the industry this sum is a reasonable and genuine pre-estimate of the loss caused to the former employer by such breach.

11. Assignment and Third Party Rights

11.1 None of the rights or obligations of the Buyer under these Conditions may be assigned, sub-licensed, sub-contracted, delegated or transferred in whole or in part without the prior written consent of the Seller.

11.2 Notwithstanding anything to the contrary contained in these Conditions or this Agreement, nothing in this Agreement shall confer any rights or benefits on any third parties who are not parties to this Agreement.

12. Lien

The Seller shall be entitled to a general lien on all Media, Hardware and Property owned by the Buyer in the Seller's possession (although the Buyer might have paid for the same in full) in satisfaction of the whole or part as the case may be of the

unpaid price of any Software and/or Hardware sold and delivered to the Buyer under this or any other contract. The Seller shall be entitled to offset any sum or sums owing to it from the Buyer against any sum or sums owed to the Buyer by the Seller.

13. Term and Termination

13.1 Save as provided specifically elsewhere in these Conditions, all terms and obligations of the Seller and the Buyer shall remain in force indefinitely unless written notice to terminate is served by registered mail under the following Conditions:

- One month's notice by the Seller to the Buyer if the Buyer's obligations as to amount and timing of payment have not been met.
- One month's notice by the Buyer to the Seller at any time following the expiry of twenty one days after date of written notification by the Buyer to the Seller of material defects in Products or failure substantially to perform all material elements of the Services which are under the control of the Seller to rectify and for which satisfactory arrangements to rectify have not been made.
- Not less than three months notice by either party in Part VI expiring on the Support Anniversary Date permitted by Law and such invalidity, illegality or enforceability shall not prejudice the effectiveness of the rest of these Conditions or the remainder of any part of the Condition affected.

13.2 The Agreement may be terminated forthwith by the Seller or the Buyer on

written notice by registered mail if the other is in breach of a fundamental term of the Agreement and in the event of a breach capable of being remedied fails to remedy the breach within 30 days of receipt of notice in writing to do so.

13.3 The Seller or Buyer may terminate the Agreement forthwith on written notice by registered mail if the other shall become insolvent or bankrupt, or make an arrangement with its creditors generally or go into liquidation (other than for the purpose of solvent reconstruction or amalgamation) or have a receiver appointed over the whole or part of its assets or an administration order made in respect of it.

13.4 Termination of the Agreement shall not prejudice any rights or remedies of either party against the other which have arisen on or before the date of termination.

13.5 Within seven days following the termination of the Agreement the Buyer shall cease to use in its business all Software licensed under the Agreement, remove all copies of such Software from its computers, return these and related documentation to the Buyer and certify in writing to the Seller that this has been done.

14. Severability

If any part of the Agreement or these Conditions is held to be invalid, illegal or unenforceable in any respect whether in whole or in part then such part shall be severed from the remainder of the Conditions which will continue to be valid and enforceable to the fullest extent

15. Waiver

Failure by the Seller to exercise or delay in exercising any right or remedy under any contract subject to these Conditions shall not constitute a waiver of the right or any other rights or remedies and no single or partial exercise of any right or remedy shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.

16. Governing Law and Jurisdiction

Any contract to which these Conditions apply shall be governed by and construed in accordance with English law and the parties submit to the non-exclusive jurisdiction of the English courts.

17. Notices

Any notice required or permitted to be given by either party to the other under these Conditions or this Agreement shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this Condition to the party giving the notice.

18. Variation

No variation, modification or cancellation of these Conditions or any of them shall be binding on the Seller unless the same shall be in writing and shall be signed by an executive officer of the Seller.

19. Compliance with Laws

19.1 The Buyer represents and warrants to the Seller that it will at all times during the term of this Agreement comply with the provisions of the Data Protection Act 1998 and the Human Rights Act 1998 (when it comes into force).

19.2 The Buyer agrees to indemnify and hold harmless the Seller and its employees,

officers, directors, shareholders, contractors and agents from any and all liability, loss, damages, claims or causes of action, including reasonable legal fees and expenses, arising out of or related to the Buyer's breach (or with regard to the defence thereof, alleged breach) of Condition 19.1

19.3 For the avoidance of doubt, the Buyer irrevocably agrees that the Seller shall have no obligation to advise the Buyer upon the content of or compliance with the Data Protection Act 1998 or the Human Rights Act 1998.

20. Entire Agreement

The Buyer acknowledges that in entering into this Agreement it has not relied on any warranty, representation, undertaking or agreement other than those contained or referred to in this Agreement. The Buyer waives any right or remedy it may have to claim damages or rescission for any misrepresentation in respect of any representation not contained in this Agreement or for breach of any warranty not contained in this Agreement and acknowledges that its only remedies against the Seller are for breach of contract provided always that nothing in this Condition 20 shall exclude or limit the Seller's liability to the Buyer in respect of any fraudulent misrepresentations or warranty fraudulently given and upon which the Buyer can prove it has placed reliance. Subject to the foregoing, this Agreement and its Schedules and the documents referred to herein constitute the entire agreement and understanding between the parties with respect to all the matters which are referred to in this Agreement.