



# General Terms and Conditions of Supply



## 1. DEFINITIONS

1.1. These terms and conditions shall be subject to the following rules of interpretation and definitions:

- a) **"Affiliate"** means a company which is a subsidiary or holding company of it, or any company which is a subsidiary of any such holding company, from time to time, where "holding company" and "subsidiary" shall have the meanings ascribed to them in s1159 Companies Act 2006;
- b) **"Applicable Laws"** means all laws, regulations, directions, rules, guidance, orders, decrees and codes of conduct in each case issued or approved by any relevant regulatory authority and, in each case, where legally binding and in each case of any jurisdiction, which are applicable to these Conditions or any Party or any activity of any Party, as amended and in force from time to time;
- c) **"Bespoke Materials"** means all materials (including without limitation any user guides and works) conceived, prepared, created or designed by Supplier, pursuant to the Contract;
- d) **"Charges"** means the sums payable by the Customer under the applicable Contract;
- e) **"Confidential Information"** means all information disclosed by a disclosing Party pursuant to the Contract including but not limited to commercial, financial, technical, trade secrets, industrial secrets, business plans, product development plans, product specifications and/or Contract terms, pricing information, product evaluation, testing analysis and results, customer information in whatever form, together with all analyses, compilations, data, studies, reports, summaries or other information, prepared by the receiving Party which are derived from or include in whole or part the Confidential Information of the disclosing Party, its suppliers or customers, or the fact that such information has been made available;
- f) **"Conditions"** means these terms and conditions as amended from time to time by the Supplier;
- g) **"Contract"** means each agreement for the supply of Deliverables, consisting of these Conditions, the Quotation and the Order;
- h) **"Customer"** means the company procuring the Deliverables, as detailed within the Quotation;
- i) **"Data Protection Laws"** means all laws that relate to data protection, privacy, the use of information relating to individuals, and/or the information rights of individuals and all laws implementing them as are applicable in the circumstances, in each case as may be replaced, extended or amended, including, without limitation, the General Data Protection Regulation (EU) 2016/679, the UK GDPR (as defined in the Data Protection Act 2018), the Data Protection Act 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003 as well as all applicable finalised codes of practice and guidelines of any privacy regulator, in each case in any relevant jurisdiction(s);
- j) **"Deliverables"** means Hardware, Software and/or Services identified in the Contract;
- k) **"Force Majeure Event"** means any event which is beyond such Party's reasonable control, including but not limited to acts of God, floods or earthquakes, war, civil commotion, terrorist attack, imposition of a sanction, embargo or breaking off a diplomatic relation. This shall exclude strikes or any other forms of industrial action by the employee, agent or sub-contractors of that Party;
- l) **"Hardware"** means the physical components of a computer system including the central processing unit (CPU), memory (RAM), storage devices (hard drives, SSDs), input devices (keyboard, mouse), output devices (monitor, printer), peripherals or such other Hardware identified in the Quotation;
- m) **"Intellectual Property Rights"** or **"IPR"** means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights and any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world;
- n) **"Order"** means a purchase order issued by the Customer or written acceptance of the Quotation, as the case may be;
- o) **"Pre-Existing Materials"** means any and all code, data or material (including but not limited to documents, information, plans, specifications, drawings, diagrams, images, software) which is not created as consequence of the performance of the Services;
- p) **"Software"** means generally available standard software, whether microcode, firmware, operating systems or applications;
- q) **"Subscription Software"** means service offerings for maintenance and support for products or subscriptions licensed by a Third Party Supplier;
- r) **"Statement of Work"** means the document which sets out the details of the Services and any additional terms and conditions that may apply to such Services;
- s) **"Services"** means all or any part of the Services to be provided as defined in the Contract;
- t) **"Support Services"** means Third Party Supplier support services for Hardware and/or Software as detailed within the Quotation;
- u) **"Third Party Supplier"** means the original equipment and/or Hardware manufacturer, Support Services provider or licensor of Software;
- v) **"Supplier"** means Bell Microsystems Limited, trading as Bell Integration, with its registered office at Bay House Compass Road, Cosham, Portsmouth, Hampshire, England, PO6 4RS;

- w) **“Working Day”** means between the hours of 9am to 5.30pm on Monday to Friday, excluding any public holidays in England and Wales.

The Supplier and Customer may each be referred to as **“Party”** and together as the **“Parties”**.

- 1.2. In the event of conflict, the following order of precedence will apply (a) Third Party Supplier terms included in the Quotation; (b) the Statement of Work; (c) the Quotation; and (d) these Conditions.
- 1.3. Headings in these Conditions are for ease of reference only and shall not affect interpretation or construction.

## **2. BASIS OF CONTRACT**

- 2.1. These Conditions govern the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.2. The Customer may procure Deliverables for its own internal use for business purposes.
- 2.3. The Supplier or any of its Affiliates identified in the Quotation may supply the Deliverables to the Customer.
- 2.4. These Conditions may be supplemented by specific terms included in the Quotation or Third Party Supplier terms identified by the Supplier.

## **3. QUOTATION**

- 3.1. Unless otherwise agreed, prices stated in a Quotation issued by the Supplier are valid until the expiration date of the Quotation and may change due to shortages in materials or resources, increase in the cost of manufacturing or other factors beyond Supplier's reasonable control.
- 3.2. The Customer may issue an Order for the Deliverables stated within the Quotation, which are subject to availability and written acceptance by the Supplier.

## **4. DELIVERY**

- 4.1. The Supplier shall deliver the Deliverables to the delivery location on the delivery date set out in the Order, or as amended in writing between the Parties from time to time.
- 4.2. Any dates quoted for delivery are approximate only, time of delivery is not of the essence.
- 4.3. Customer will notify Supplier within five (5) working days after delivery date if Customer believes any Deliverables included in the Contract are missing, wrong, or damaged, and will ensure that the intended installation site meets the specifications as per the applicable documentation provided by the Supplier.
- 4.4. All Deliverables are deemed accepted on delivery, this is without prejudice to the Customer's rights and remedies under the Condition 9 (*Warranties*).

## **5. RISK AND TITLE**

- 5.1. Risk in the Deliverables shall pass to the Customer on delivery.
- 5.2. Software may be provided by delivery of physical media or through electronic means.
- 5.3. Supplier shall retain title in all Hardware until Charges are paid in full. Prior to payment of the Charges, the Customer shall:
- 5.3.1. hold the Hardware on a fiduciary basis as the Supplier's bailee and will not pledge or in any way charge by way of security for any indebtedness any of the Hardware;
- 5.3.2. ensure the Hardware remains readily identifiable as the Supplier's property;
- 5.3.3. not destroy, deface or obscure any identifying mark on the Hardware; and
- 5.3.4. maintain the Hardware in satisfactory condition.

## **6. LICENCED SOFTWARE AND SERVICES**

- 6.1. If the Deliverables include Software or Subscription Software, these are supplied in the form and the purpose in and for which they are made generally available by the Third Party Supplier and excludes any bespoke software or customisations.
- 6.2. The Customer shall comply with the Third Party Supplier's terms and conditions, including any applicable end user licence agreement, a copy of which shall be supplied within the Quotation or on request.

## **7. SERVICES**

- 7.1. Supplier will provide Services in accordance with the applicable Statement of Work or other agreed documentation to govern the provision of Services.
- 7.2. Services may be provided on a fixed price or time and materials basis.
- 7.3. Both Parties shall perform their obligations in accordance with the Contract and any applicable Statements of Work.
- 7.4. If the Supplier is supplying a worker who is deemed to be an employee of the Customer under Applicable Laws, the Customer shall assume all the responsibilities for any and all income tax, National Insurance and social security contributions of the worker arising out of such deemed employment.

## **8. THIRD PARTY SUPPLIER SUPPORT SERVICES**

- 8.1. Availability of Support Services is governed by the Third Party Supplier's terms and conditions and policies or otherwise communicated to the Customer by the Supplier.
- 8.2. Unless otherwise agreed, Support Services will expire at the earlier of (a) the expiration of the term of the Support Services purchased by the Customer or (b) the applicable end-of-service-life date and Customer's sole and exclusive remedy for such termination will be the credit by the Supplier of any pre-paid fees for the Support

Services that will not be provided as a result of such termination.

- 8.3. Unless stated otherwise in the Quotation, Support Services for Software apply only to the current and the immediately prior release of the Software.
- 8.4. Support Services do not cover (a) problems that are excluded from the Third Party Supplier's warranty coverage; (b) problems that cannot be reproduced at the Third Party Supplier's facility or via remote access to the Customer's facility; (c) onsite activities for Hardware located outside of the applicable service area; (d) providing media replacement, operating supplies, cosmetic repairs, accessories or parts of such Hardware; or (e) damage or defects that do not affect device functionality.
- 8.5. Replaced Hardware or components will be returned to Supplier or Third Party Supplier, as applicable and become Supplier property upon receipt of such items at Supplier's specified facility unless agreed otherwise in the Contract.
- 8.6. If Customer does not return a replaced component within (10) Working Days after receipt of Supplier's request, Supplier reserves the right to charge Customer for such replaced component. If Supplier determines that a component is replaceable that is, easily disconnected and reconnected or if Supplier determines Hardware should be replaced, Supplier reserves the right to send Customer a component or replacement Hardware for exchange.
- 8.7. Supplier will not access or use Customer production data stored on Hardware or Software without the prior written approval of the Customer. Unless data deletion services are expressly ordered from Supplier, Customer is responsible for removing all information and data stored on replaced parts, Hardware or any other items before they are returned to Supplier.
- 8.8. If Hardware is covered by Services and Customer intends to: (a) relocate Hardware to a different site; (b) change the Hardware configuration; (c) deny activation or disable remote support features of Hardware, Customer will notify Supplier in advance. Supplier reserves the right to discontinue Services or charge additional fees if the foregoing limits Suppliers ability to provide Services or increases the Supplier or Third Party Supplier's costs. In addition, proactive support capabilities, response times or other service levels may no longer apply.

## **9. WARRANTIES**

- 9.1. Each Party represents and warrants to the other Party that:
  - 9.1.1. it has all right, power and authority to enter into the Contract and fully perform its obligations;
  - 9.1.2. it will comply with all Applicable Laws in performance of its obligations under the Contract;

- 9.1.3. the execution of the Contract does not violate any agreement existing between that Party and any third party;

- 9.1.4. it has and will maintain all authorisations, approvals, licences and consents that it requires to perform its obligations under the Contract.

- 9.2. Supplier warrants it will perform Services in accordance with good industry practice and in accordance with Applicable Laws by suitably skilled personnel.

- 9.3. Customer acknowledges Supplier is not a manufacturer of Hardware or licensor of Software. Supplier shall use all reasonable endeavours to procure the benefit of the Third Party Supplier warranties, assurances and guarantees for the benefit of the Customer.

- 9.4. In the event the Customer becomes aware of any defect in the Deliverables during the Third Party Supplier warranty period, the Customer shall promptly notify the Supplier with written particulars of such defect and provide access as necessary to enable Supplier or Third Party Supplier to ascertain and verify the nature and cause of the defect.

- 9.5. The warranties in this Condition 9 shall not apply where such defect is caused in whole or in part by:

- 9.5.1. any alteration or addition to the Deliverables by the Customer;

- 9.5.2. by use or storage of the Deliverables in a manner reasonably considered by Supplier or Third Party Supplier to be improper or not in accordance with written instructions or warranty; and/or

- 9.5.3. faulty installation, maintenance or repair by Customer or any third party not approved by Supplier.

- 9.6. Supplier disclaims to the fullest extent permitted by law, all warranties, conditions any other terms in relation to the Deliverables, whether implied by law, statute, custom or course of trading, including without limitation any warranties regarding quality, merchantability or fitness for purpose.

## **10. CHARGES AND PAYMENT**

- 10.1. The Charges of the Deliverables shall be set out in the Quotation.

- 10.2. Customer shall pay all undisputed invoices, without set off or deduction within thirty (30) days from the date of invoice. Where the Customer has a bona fide dispute regarding the Charges invoiced, it shall notify the Supplier within thirty (30) days from the date of invoice.

- 10.3. In addition to the Charges and subject to receipt of a valid VAT invoice, Customer shall pay all VAT on the Charges at the rate and in the manner prescribed by law from time to time. Where Customer provides Supplier with a valid VAT exemption certificate for any of any Deliverables provided under the Contract, such that they will be VAT zero rated pursuant to Group 15 (Item 5) to Schedule 8 of the Value Added Tax Act 1994, Supplier will

not charge VAT on the applicable Charges. Supplier shall not be liable for any VAT, costs, penalties, interest or other charges arising from any incorrect VAT treatment by Customer.

10.4. If Customer fails to pay the Charges by the due date in accordance with Condition 10.2, interest on the outstanding Charges shall accrue on a daily basis from the due date until the date of payment (whether before or after judgement) at the rate of four percent (4%) above the base rate of the Bank of England from time to time.

10.5. The Charges shall be payable in pounds sterling, unless specified otherwise in the Contract.

10.6. In case of Customer's default in payment Supplier may, until arrangements as to payment or credit have been established: (a) cancel or suspend its performance of such Contract; and/or (b) withhold performance under these Conditions.

10.7. If any amount due to Supplier is subject to any withholding tax or deduction by the Customer, the Customer will gross up the payment so that Supplier receives the agreed amount and the surplus is remitted to the relevant tax authority.

10.8. Unless otherwise agreed in the Contract, all annual Charges are subject to annual increase in line with the prevailing CPI percentage, which shall be applied on an annual basis at the then prevailing rate.

#### **11. DATA PROTECTION**

11.1. The Parties will comply with all Data Protection Laws.

11.2. Supplier shall process any Personal Data to the extent required for the performance of the Contract and with the express written consent of the Customer.

11.3. Unless otherwise required by Applicable Laws, a Party shall return or destroy all personal data in a suitably confidential manner.

#### **12. INSURANCE**

Both Parties agree to take out and maintain such insurance cover as is commercially prudent or as required by Applicable Laws, with a reputable insurance company including but not limited to employers liability, public liability and professional indemnity.

#### **13. LIMITATION OF LIABILITY**

13.1. The restrictions on liability in this Condition 13 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

13.2. Neither Party excludes or limits its liability to the other: i) for personal injury or death caused by its negligence; ii) for any matter for which, at law, a Party cannot exclude or limit its liability; or iii) for fraud or fraudulent misrepresentation

13.3. Subject to Condition 13.2, neither Party shall have any liability to the other Party for any: loss of profits or

expected turnover, loss of or corruption of data, loss of or damage to goodwill or reputation, or any indirect, special or consequential loss.

13.4. Subject to Conditions 13.2 and 13.3, the Supplier total liability to the Customer arising under or in connection with the Contract whether for breach of contract, tort, breach of statutory duty or otherwise shall not exceed: i) £1 million for damage or loss attributable to the Supplier's negligence or for damage or loss to the Customer's physical property caused by defective Deliverables; and, ii) for all other loss or damage, the total Charges paid by the Customer under the Contract.

13.5. Subject to Conditions 13.2 and 13.3, Customer's total liability to Supplier whether for breach of contract, tort, breach of statutory duty or otherwise shall not exceed in, one hundred percent (100%) the total Charges paid, due to be paid or payable by the Customer under the Contract giving rise to such liability.

#### **14. ANTI-BRIBERY, CORRUPTION AND FACILITATION OF TAX EVASION**

14.1. Supplier shall:

14.1.1. act in accordance with all Applicable Laws relating to bribery, corruption and the non-payment of secret commissions;

14.1.2. not do, or omit to do anything likely to cause the Customer to be in breach of Applicable Laws;

14.1.3. not give, promise, receive or request any bribes (financial or other advantage), including but not limited to in relation to a public official;

14.1.4. maintain an effective anti-bribery (including gift and hospitality) compliance programme, designed to ensure compliance with Applicable Laws including the monitoring of compliance and detection of violations; and

14.1.5. reasonably assist the Customer to comply with its legal obligations related to bribery, corruption and secret commissions required by Applicable Laws. Any related costs shall be borne by the Customer where such assistance is requested.

14.2. The Supplier shall promptly notify the customer of any allegations of fraud, bribery, secret commissions or corrupt practices made against the Supplier in court, arbitration or administrative proceedings or if any investigation is commenced in respect of such allegations any time during the term of the Contract.

#### **15. ANTI-SLAVERY**

15.1. The Supplier undertakes, warrants and represents that:

15.1.1. It has not committed an offence under any Applicable Laws relating to the prevention of slavery ("**Anti-Slavery Laws**");

15.1.2. It has not been notified that is subject to an investigation relating to the alleged offence or the prosecution under Anti-Slavery Laws;

- 15.1.3. It is not aware of any circumstances within its supply chain that could give rise to an investigation relating to an offence or prosecution under the Anti-Slavery Laws; and
- 15.1.4. It will promptly notify in writing if it becomes aware or has reason to believe that it, or any of its officers, employees or agents or subcontractors or suppliers have been Anti-Slavery Laws.

## **16. CONFIDENTIALITY**

- 16.1 Each Party shall keep strictly confidential all Confidential Information received directly or indirectly from the other Party. Such Confidential Information shall not be disclosed to any third party without the prior written consent of the Party to whom such Confidential Information belongs.
- 16.2 This Condition shall not apply to Confidential Information if and to the extent that: (i) it is required to be disclosed by any court of competent jurisdiction or by a governmental or regulatory authority or where there is a legal duty or requirement to disclose, if lawful, reasonable prior notice of such disclosure shall be given to the other Party; (ii) it is information which is in the public domain through no fault of the Party receiving such Confidential Information; (iii) the receiving Party can demonstrate came to its knowledge by means of disclosure by a third party free from any obligation of confidentiality; (iv) the receiving Party can show it was information in the possession of the receiving Party prior to disclosure under the relevant Contract; or (v) it is information that is independently developed by personnel of the receiving Party having no access to the other Party's Confidential Information.
- 16.3 If the receiving Party discovers or becomes aware of any unauthorised disclosure of Confidential Information, it shall immediately notify the Disclosing Party, promptly take all possible action to prevent further disclosure and provide such assistance as the other Party may require to minimise the effects of such disclosure and prevent any further dissemination.

## **17. INTELLECTUAL PROPERTY RIGHTS**

- 17.1. Each Party retains ownership of any Pre-Existing Materials. Unless expressly stated in the Contract, nothing in these Conditions or use of the other Party's IPR shall be construed as the transfer or grant of any interest in any such rights.
- 17.2. The Customer and its licensors shall retain IPR in any Bespoke Materials created as part of the Services.
- 17.3. The Customer grants to Supplier the non-exclusive royalty free licence to use the Customer's systems to the extent reasonably required to perform the Services.
- 17.4. For the avoidance of doubt, any licence granted pursuant to this Condition 17 shall terminate with immediate effect upon expiry or termination of the Contract.

## **18. INTELLECTUAL PROPERTY INFRINGEMENT**

- 18.1. Each Party shall indemnify the other and hold it harmless on demand, from and against all actions, claims, liabilities, demands, proceedings, costs (including reasonable legal costs) suffered or incurred by the other Party by reason of claims that the possession or use of the other Party's IPR infringes the IPR of a third party and in the case of the Supplier that performance of the Services or Bespoke Materials infringe the IPR of a third party.
- 18.2 Supplier shall have no liability for any IPR infringement claim to the extent that it is based on (i) the use or combination with software, hardware or other materials not recommended by Supplier, provided such infringement would not have arisen but for such use or combination; or (ii) use in a manner other than that for which it was designed or contemplated, or (iii) any unauthorised modification of the Deliverables by any other person not party to the Contract; or (iv) any compliance with designs, plans or specifications provided by the Customer.

## **19. TERMINATION**

- 19.1. Either Party may by written notice terminate the Contract if:
- 19.1.1. the other Party is in material breach of any Condition(s) of the Contract, which is either: (i) not capable of remedy; or (ii) being capable of remedy, has not been remedied within thirty (30) days after written notice from the other Party requiring it to do so; or,
- 19.1.2. is unable to pay its debts as they mature, or suffers the appointment of a receiver, administrative receiver or administrator or the whole or any part of its assets or is the subject of any bankruptcy proceedings;
- 19.1.3. if a Force Majeure Event continues for a period of sixty (60) days.
- 19.2. The Customer may not terminate the Contract in whole in part for convenience. In the event of such cancellation, the Customer shall be liable to pay the Charges under the applicable Contract and any reasonable loss or expenses incurred by Supplier due to such termination.

## **20. CONSEQUENCES OF TERMINATION**

- 20.1. On termination of the Contract:
- 20.1.1. Customer shall immediately pay to Supplier all outstanding unpaid invoices and interest.
- 20.1.2. Customer shall return all of the Supplier materials. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
- 20.2 Termination shall not affect the rights and liabilities of either Party accruing up to and including termination nor the continuation in force of any terms or conditions

which are expressly or by implication intended to continue beyond termination.

20.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

## **21. NON-SOLICITATION**

21.1 Each Party undertakes for the Term of the Contract and for a period of twelve (12) months thereafter that it shall not either directly or indirectly employ or engage (whether as employee or consultant) solicit or entice away such individuals who have been directly involved in the provision of Services under the Contract, including the employees, contractors or personnel of the other Party.

21.2 Nothing in these Conditions shall limit either Party's right to directly or indirectly employ or engage any person who has approached it in response to any public advertisement.

## **22. NOTICES**

22.1. Notices shall be in writing and shall be delivered by hand, first class post or special delivery post to the respective addresses in the Quotation.

22.2. Notices will be deemed to have been duly served if delivered by hand at the time of delivery; if delivered by first class post or special delivery post 48 hours after being posted, provided that where in the case of delivery by hand such delivery occurs either after 4PM (local time) on a Working Day, or if delivered after 4PM on a Working Day or on a day other than a Working Day, service will be deemed to occur at 9.00 am local time on the next Working Day.

## **23. FORCE MAJEURE**

23.1. Neither Party shall be liable for the failure to perform its obligations under the Contract, if such failure results from a Force Majeure Event.

23.2. Each Party shall use all reasonable endeavours to limit the effects of a Force Majeure Event.

23.3. Each Party agrees to give notice forthwith to the other upon becoming aware of a Force Majeure Event, such notice to detail the circumstances giving rise to the Force Majeure Event.

## **24. GENERAL**

24.1. These Conditions which govern the Contract, form the entire agreement between the Parties with regard to their subject matter. Any variation to this Contract must be in writing and signed on behalf of both Parties. If a court decides that any part of these Conditions cannot be enforced, that particular part of this Contract will not apply, but the rest of this agreement will. A waiver by a Party of a breach of any provision shall not be deemed a continuing waiver or a waiver of any subsequent breach of the same or any other provisions. Failure or delay in

exercising any right under this Contract shall not prevent the exercise of that or any other right. Customer may not assign or transfer any benefit, interest or obligation under this Contract. The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Contract.

24.2. The Parties are independent contractors for all purposes under these Conditions. These Conditions do not create any agency, partnership, or joint venture.

24.3. Neither Party may assign, transfer or novate any rights or obligations under the Contract or these Conditions without the other Party's prior written consent, such consent not to be unreasonably withheld or delayed.

## **25. EXPORT CONTROL**

25.1. The Deliverables are supplied for use in the territory of the delivery location and the Parties shall comply with all applicable laws, rules, and regulations governing export of the Deliverables ("Export Laws"), and shall not export or re-export, directly or indirectly, separately or as a part of a system, the Deliverables to any country for which an export licence or other approval is required, without first obtaining such licence or other approval.

25.2. The Customer shall be solely responsible for ensuring its access, importation or use of the Deliverables outside of such territory complies with all Export Laws

## **26. JURISDICTION AND GOVERNING LAW**

26.1. The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed at all times in accordance with the laws of England and Wales and the Parties submit to the exclusive jurisdiction of the courts of England.