

TERMS AND CONDITIONS OF SUPPLY – HARDWARE AND SOFTWARE

These Hardware and Software Terms and Conditions (the Terms) of Supply are to be read in conjunction with the Proposal a for Supply of Hardware, Software and Services

INTRODUCTION

- (A) The Supplier is engaged in selling and supplying computer systems including hardware and software.
- (B) The Customer wishes to purchase its hardware and software requirements from the Supplier upon the terms and subject to the conditions of this Agreement.

OPERATIVE PROVISIONS

1 Definitions

The capitalised terms are defined words and the meanings are set out at the end of this Agreement.

2 Scope of Supply and Agreement

- 2.1 The Supplier agrees to supply to the Customer the Products in accordance with the Orders and subject to the terms of this Agreement.
- 2.2 The Customer has specified its requirements in respect of the Products to the Supplier in the Orders. No Order submitted by the Customer shall be deemed to be accepted by the Supplier unless and until acknowledged and accepted in writing by the Supplier's authorised representative.
- 2.3 In particular, but without limiting the generality of clauses 2.1 and 2.2, the Supplier will upon receipt, acknowledgement of and acceptance of any of the Orders from time to time (as the case may be):
 - 2.3.1 deliver and install the Products at the Location;
 - 2.3.2 sell and/or supply the Products to the Customer as specified by the Customer in the Orders on the Supplier's usual terms;
 - 2.3.3 grant to the Customer, and in the case of any third-party software procure the grant to the Customer, of non-exclusive licences on the terms specified to use the software and documentation (including operating manuals and technical specification) as part of the Products;
 - 2.3.4 supply the documentation (including operating manuals and technical specification) upon request and in accordance with the Orders;
 - 2.3.5 assist the Customer during the period of the Acceptance Tests;
 - 2.3.6 provide any specified consumable supplies as may be required from time to time by the Customer.

- 2.4 The Supplier may employ Sub-Suppliers for carrying out any part of the Services or supply of the Products provided that the Supplier will not be relieved of any of its obligations under this Agreement by entering into any sub-contract for the performance of any part of the Services or supply of the Products, and will at all times remain primarily responsible and liable to the Customer for the conduct of the Sub-Suppliers.
- 2.5 The Supplier shall use its reasonable endeavours to provide and carry out the Services or supply the Products with reasonable care and skill using appropriately qualified and experienced persons.
- 2.6 If required by the Customer the Supplier will enter into a separate contract during the Term relating to assisting the Customer in respect of any matter for which this Agreement makes no provision.

3 Change(s)

- 3.1 Except as provided in this Agreement, no changes to this Agreement or any Orders shall be binding unless agreed in writing between the authorised representatives of the Supplier and Customer provided always that any changes to this Agreement shall be authorised by a partner of the Supplier.
- 3.2 Until any change is formally agreed between the Supplier and the Customer the Supplier will continue to perform and be paid for the Services or supply of the Products as if the change had not been proposed.
- 3.3 The Supplier may make a reasonable charge for investigating a proposed change and preparing an impact assessment or a quotation or estimate for that change (whether or not subsequently implemented) subject to agreeing the basis of charging for doing so with the Customer in writing before proceeding with the investigatory work.

4 Customer's Responsibilities

- 4.1 The Customer will provide the Supplier with such information as it may reasonably need concerning the Customer's operations and answers to queries, decisions and approvals which may be reasonably necessary for the Supplier and its Sub-Suppliers to undertake the Services or supply the Products.
- 4.2 The Customer is responsible for ensuring that such information and answers are accurate and complete.
- 4.3 The Supplier will, to the extent reasonably practicable, give the Customer reasonable prior notice of any information or answers it requires in accordance with this Agreement and will notify the Customer if it considers the Customer to have failed to provide information or answers in accordance with this Agreement or if it has reason to suspect that any such information is inaccurate or incomplete.
- 4.4 The Customer will at agreed times and upon request during the Term provide, free of charge, in connection with the Services or supply of the Products, access to and use of the Customer's equipment, the Customer's employees, the Hardware and the Location.
- 4.5 The Customer will provide at its own expense the following:

- 4.5.1 proper and suitable environmental conditions for the Product or any part of the Product as specified in any instructions whether from the Supplier or manufacturers;
- 4.5.2 adequate lifting or off loading facilities and labour required for positioning of any Hardware; and
- 4.5.3 suitable protection of each part of the Product from the time of delivery.
- 4.6 The Customer is responsible for ensuring that the Customer equipment is properly installed and is sufficient and suitable for its purpose and that any adjustments which may be required are carried out expeditiously.
- 4.7 The Customer will be responsible for connecting any Hardware to the Customer equipment with the co-operation of the Supplier and/or performance of the Services.
- 4.8 The Customer has provided to the Supplier specific instructions, orders or requirements of the Customer together with sufficient information and specification in the Orders to enable the Supplier to comply with the Orders and undertake the Services or supply the Products in accordance with this Agreement.

5 Payment Provisions

- 5.1 The amounts, method and timing of payment of the Contract Price will be in accordance with the payment schedule set out in Quotation.
- 5.2 The Contract Price for each of the Services or supply of the Products pursuant to the Orders and the acknowledgement and acceptance of the Order will be firm and fixed and will not be subject to any increase except those increases beyond the control of the Supplier.
- 5.3 Unless otherwise agreed in writing by the Supplier, all sums due under this Agreement will be paid by the Customer within thirty (30) days of the date of receipt of a correct invoice or by the due date, whichever is the later or as may be specified in the relevant Acknowledgement Order.
- 5.4 The Contract Price does not include VAT or any similar sales tax, import or custom duties and like imposts and surcharges which will be paid additionally by the Customer at the then prevailing rate.
- 5.5 Where the Orders or Acknowledgement Order provides for stage payments of the Contract Price on the occurrence of specific events or dates payment will fall due on the scheduled dates.
- 5.6 In the event that the cost to the Supplier of the performance of any of the Services or supply of the Products is increased by reason of the making after the date of this Agreement of any law or of any order, regulation or byelaw having the force of law that is applicable to any of the Services or supply of the Products or any part of it the Contract Price will be adjusted accordingly.

6 Hardware

- 6.1 The Customer will from time to time (upon request) ensure that the Location conforms with the environment conditions specified in any instructions related to the Hardware by the applicable date specified in the timetable.
- 6.2 When the Customer notifies the Supplier that the Location is ready for installation, the Supplier will as soon as reasonably practicable inspect

the Location and certify whether or not the Location provides a suitable environment for the Product.

- 6.3 Title to each item of the Hardware will (except for leased Hardware) pass to the Customer on payment in full of that part of the Contract Price attributable to that item (if ascertainable) or the Contract Price.
- 6.4 The Supplier will be responsible at its own cost unless otherwise expressly agreed for the delivery and off-loading of the Hardware at the Customer's premises where the Location is located and its transfer to and installation at the Location.
- 6.5 The parties acknowledge that risk in the Hardware will pass to the Customer at the time of delivery to the Customer's premises where the Location is and the Customer will be responsible for insuring and taking care of the Hardware from that time.

7 Software

- 7.1 Unless otherwise agreed between the parties in writing, the Supplier will be responsible for providing and installing the Software on the Hardware at the Location, if applicable.
- 7.2 The software Products supplied and installed under this Agreement will consist of one single license, unless otherwise agreed, of each item of software in machine-readable object code form only on the storage media specified except that any bespoke software Product required will be delivered in both object and source code form.
- 7.3 Following acceptance or deemed acceptance of the Products under this Agreement, the parties will enter into an agreement to grant the Customer a non-exclusive, non-transferable licence for a period from the date of acceptance of the Products to use the bespoke software Products as specified in such agreement.
- 7.4 As regards any software Products supplied under this Agreement over which the Supplier or any third party holds title or other rights, the Supplier will endeavour to obtain for the Customer the non-exclusive right to use that software Product in the operation of the Products on the terms of software licence agreements to be agreed.
- 7.5 The risk in the media on which the Software is recorded will pass to the Customer on delivery at the Location.
- 7.6 With respect to the software Products specified in connection with any leased hardware products, the Supplier will upon request enter, or in the case of third party software upon request procure that the proprietor of such software enters, into a source code deposit agreement on terms with effect from the date of acceptance and the parties will procure that an acceptable escrow deposit holder enters into an agreement on such terms.

8 Installation and Acceptance Tests

- 8.1 Following any installation of the hardware Products at the Location the Supplier will submit the Products (as appropriate) to the agreed or standard installation tests (if any) of the applicable manufacturers or suppliers concerned to ensure that the Products are in working order and ready for the Acceptance Tests (if any).

- 8.2 The Supplier will supply the Customer with copies of any available test specification and results of the installation tests if so requested before the Acceptance Tests begin.

9 Acknowledgements

- 9.1 The Customer will enter into a Support Service agreement as set out in Proposal in respect of any maintenance and support services required from the Date of Acceptance.
- 9.2 The Customer acknowledges that no reliance is placed on any representation made but not embodied in this Agreement.
- 9.3 The Supplier will itself provide or secure the provision of software Support Services in respect of the Software (other than Operating Software) with effect from the Date of Acceptance or under separate contracts with the Customer.
- 9.4 The Supplier will use its reasonable endeavours to comply with any agreed timetable but all times, periods or dates will be treated as target dates only and time will not be of the essence.
- 9.5 All times, periods or dates shall be extended by a reasonable period if any delay or stoppage is caused by any act or omission of the Customer, its employees, agents or Sub-Suppliers or by any matter beyond the Supplier's control.

10 Warranties

- 10.1 The Supplier warrants and undertakes that it shall carry out any installation of the Products required of it as soon as is reasonably practicable and such installation will be free from defects in workmanship.
- 10.2 The Supplier further warrants that the documentation (including operating manuals and technical specification) will enable suitably qualified or trained personnel of the Customer to make proper use of the Products.
- 10.3 The Customer warrants that it has not relied on any representations made by or on behalf of the Supplier and its Sub-Suppliers or upon any descriptions, illustrations or specifications contained in any catalogues and publicity material produced by or on behalf of the Supplier and its Sub-Suppliers, all of which are only intended to convey a general idea of the products and services mentioned in them.
- 10.4 Subject as provided below the Supplier will be responsible (without charge to the Customer) for rectifying within 12 months of Acceptance by repair, or at the Supplier's option by supply of a replacement, any defect which under proper use, care and maintenance appears in the Product.
- 10.5 In no circumstances, shall the Supplier have any liability in respect of any defect unless the defect is promptly reported to the Supplier by the Customer in writing within seven (7) days of the occurrence of the Defect.
- 10.6 The Supplier's obligations under the defects warranty are contingent upon the Supplier and its Sub-Suppliers being given, without delay and free of charge, full details of the Defect and adequate time and access to the Products during the Supplier's normal working hours to rectify such defect. If the Supplier rectifies the defect within a reasonable period of

time (in any event within seven (7) working days) then the Supplier will have no other liability of any kind in respect of or arising from such defect.

- 10.7 Any repair of a Defect will then be subject to the same Warranty terms as apply under this Agreement for the Term of the Agreement.
- 10.8 The Supplier will not be responsible for any problem arising from or caused by any modification (whether by alteration, deletion, addition or otherwise) made to the Products or the Customer's equipment or any part of it by persons other than the Supplier without its express prior written consent.
- 10.9 The Customer will not permit any modification to be made to the Product or to the Customer equipment or any part of it during the period of the Defects Warranty by persons other than the Supplier and its authorised representatives without the Supplier's prior written consent. If any unauthorised modification is made then, without prejudice to the Supplier's other rights and remedies, the Defects Warranty will be null and void.

11 Limitation of Liability

- 11.1 The Customer agrees that the express obligations and warranties made by the Customer in this Agreement are in lieu of and to the exclusion of any other warranty, condition, term, undertaking or representation of any kind, express or implied, statutory or otherwise relating to anything supplied or services provided under or in connection with this Agreement including (without limitation) as to the condition, quality performance, satisfactory quality or fitness for purpose of the Services, the Products or any part of them.
- 11.2 The Customer acknowledges that the Supplier's obligations and liabilities in respect of the Products and the Services are exhaustively defined in this Agreement.
- 11.3 The Customer is responsible for the consequences of any use of the Product and acknowledges that the Supplier will not be liable for any indirect or consequential loss, damage, cost or expense of any kind whatever and however caused, whether arising under contract, tort (including negligence) or otherwise, including (without limitation) loss of production, loss of or corruption to data, loss of profits or of contracts, loss of operation time and loss of goodwill or anticipated savings, even if the Supplier has been advised of their possibility.
- 11.4 The Supplier shall have no liabilities under this agreement other than those imposed by statute in the event that the Customer does not fulfil the Customer's Responsibilities set out herein.
- 11.5 Notwithstanding any provision of this Agreement, the Supplier's total liability (whether in contract, tort, including negligence or otherwise) under or in connection with this Agreement and any other agreement with the Customer relating to the Products or the Services or based on any claim for indemnity or contribution shall not exceed a sum equivalent to the relevant specific Contract Price or part of the Contract Price as the case may be.

12 Cancellation and Termination

- 12.1 The Customer may cancel without cause a particular Order at any time on two (2) days' prior written notice prior to receipt of the Acknowledgement subject to payment:
- 12.1.1 of a cancellation charge as agreed by the Supplier; and
 - 12.1.2 for materials and goods ordered for the Services for which the Supplier has paid or is legally bound to pay; and
 - 12.1.3 of the total value of the relevant Services or supply of the Products completed up to the date of cancellation or termination.
- 12.2 Either party may terminate this Agreement with immediate effect by written notice if the other commits a material breach of this Agreement (and in the case of a breach capable of remedy) fails to remedy it within thirty (30) days of receipt of a written notice from the Supplier or sixty (60) days of receipt of written notice from the Customer and containing a warning of an intention to terminate if the breach is not remedied.
- 12.3 Either party may terminate this Agreement with immediate effect on written notice:
- 12.3.1 if the other ceases or threatens to cease to carry on its business or if a receiver, administrator or similar officer is appointed over all or any part of the assets or undertaking of the other party;
 - 12.3.2 if the other party makes any arrangement for the benefit of its creditors or if the other party goes into liquidation save for the purposes of a genuine amalgamation or reconstruction or becomes bankrupt.
- 12.4 Upon termination of this Agreement for whatever cause the Supplier will be paid all money due to the Supplier after taking into account amounts previously paid together with all other relevant costs as specified in the Proposal.
- 12.5 Termination of this Agreement will not affect any rights of the parties accrued to them up to the date of termination.

13 **Force Majeure**

- 13.1 Neither party will be liable for any delay in performing or failure to perform any of its obligations under this Agreement caused by the occurrence of a Force Majeure event.
- 13.2 Any delay or failure by a Sub-Supplier or supplier of the Supplier will not relieve the Supplier from liability for delay or failures except where that delay or failure is also beyond the reasonable control of the Sub-Supplier or supplier concerned.
- 13.3 The party claiming the Force Majeure Event will promptly notify the other in writing of the reasons for the delay or stoppage (and the likely duration) and will take all reasonable steps to overcome the delay or stoppage.

14 **Miscellaneous**

- 14.1 **Waiver:** No delay or failure by either party to exercise any of its powers, rights or remedies under this Agreement will operate as a waiver of them nor will any single or partial exercise of any such powers, rights or remedies preclude any other or further exercise of them. Any waiver, to be effective, must be in writing. The remedies provided in this

Agreement are cumulative and not exclusive of any remedies provided by law.

- 14.2 **Severability:** If any part of this Agreement is found by a court of competent jurisdiction or other competent authority to be invalid, unlawful or unenforceable then such part will be severed from the remainder of this Agreement which will continue to be valid and enforceable to the fullest extent permitted by law.
- 14.3 **Variation:** Except as otherwise permitted by this Agreement no change to its terms will be effective unless it is in writing and signed by persons authorised on behalf of both parties.
- 14.4 **Third Parties:** No person who is not a party to this Agreement has any right to enforce its terms and shall have no right under the Contracts (Rights of Third Parties) Act 1999.
- 14.5 **Entire Agreement:** This Agreement contains the entire agreement between the parties and supersedes all prior agreements or arrangements. This Agreement comprises the Proposal, the Quotation and these Terms of Supply.

15 Notices

All notices to be given under this Agreement will be in writing and will be served by hand or courier to the address of the recipient shown on the front page of this Agreement or any other address the recipient may designate by notice given in accordance with this clause.

16 Governing Law

This Agreement will be construed in accordance with and governed by the law of England and Wales and each party agrees to submit to the non-exclusive jurisdiction of the courts of England and Wales.

Interpretation and Definitions

In this Agreement unless inconsistent with the context or otherwise specified the following definitions have the following meanings:

“**Acceptance Test(s)**” means the test(s) by the Supplier which is suitable to demonstrate that the Products complies with and performs in accordance with the Orders;

“**Acknowledgement**” means the Supplier’s acceptance and acknowledgement of the Orders containing the payment schedule, timetable and detailing the implementation and each phase of the relevant Services;

“**Commencement Date**” means the Acknowledgement and Acceptance Date of the Purchase Order.

“**Contract Price**” means the price payable for each of the Products or Services (as the case may be) excluding taxes, specified in the Supplier’s Quotation;

“**Force Majeure Event**” means any event (other than the payment obligations) beyond the reasonable control of a party;

“**Location**” means the Customer’s offices or such other location(s) set out in the Customer’s Requirements where the Product or parts of it will be installed;

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“Orders” means the instructions and orders of the Customer in respect of its information technology requirements contained in an agreed form (including the specification of the Product describing the intended functions and facilities for the Product and the Customer’s particular requirements on each occasion in respect of the Services, maintenance and other matters) from time to time and expressly accepted by the Supplier;

“Products” means any Hardware (computer units, peripherals and other equipment) and/or Software (computer programs, bespoke software, operating software and the other software Products);

“Services” means all services and other items to be provided from time to time during the Term by the Supplier to the Customer under this Agreement and in accordance with the relevant Orders;

“Sub-Supplier” means any person, firm or company (other than the Supplier) to whom is sub-contracted any part of the Services.

“Supplier” means Vericool Limited, Reg. No. 07683425