

TERMS & CONDITIONS



supply and licensing of software

These terms are supplemental to the General Terms and Conditions of Software and Consultancy Supply (the "General Terms")

1. Agreement to Supply

- 1.1. We agree to supply the software (other than custom software) referred to in the quotation subject to the General Terms and these terms and conditions at the price set out in it ("supply" in this Agreement means "license and (if appropriate) provide with media").
- 1.2. Custom software means any software which we have written for you at your request. The supply of custom software is governed by our Standard Terms for the Development of Software
- 1.3. Nothing in this agreement is intended to pass the title in any copyright or other intellectual property to you, and any right which you gain to use intellectual property is obtained solely either under our core licence agreement a copy of which is available on request or under the licence agreement applicable to the software in question.

2. Payment of Licence Fee

- 2.1. You agree to pay the licence fee contained in the quotation in accordance with the payment terms set out in it without set-off or counterclaim.
- 2.2. If the licence fee is a periodic licence fee (e.g. *annual licence fee*), you agree to pay each periodic fee promptly in accordance with the terms of payment set out in the quotation. If it states in the quotation that you are to pay by direct debit, you authorise us to deduct relevant payments from the appropriate bank account in accordance with the direct debit rules in force from time to time.
- 2.3. If you fail to pay any periodic fee due, your licence to use the software is terminated. You are warned that there may be disabling devices in the software which prevent its further use while you remain unlicensed.

3. Media Warranty

- 3.1. If we supplied the software on magnetic, electronic or optical media, we warrant the media (as opposed to any programs or data which the media may contain) to be free from transcription errors or defects in manufacture for [one year] from the date we supply it. During the warranty period, we will repair or replace (at our option) the media with media not containing the transcription error or defect, provided that you have not abused it and you are not in breach of any of your obligations to us or to any licensor of the software or data contained on the media. This warranty is in addition to any rights you may have by law.

4. Specification

- 4.1. Unless it states in the quotation that we specified the software we shall not be liable for the software's fitness for any purpose or satisfactory quality, and we expressly exclude

all other liability for warranties, whether express or implied, except as follows. We warrant only that it complies with its description as set out in the quotation.

- 4.2. Where it states on the quotation that we specified the software we shall not be liable for any failure of the software except as otherwise set out in this agreement, or to the extent that no reasonable computer professional in our position, and based on what you have told us, and in the circumstances could have specified that software at the time we specified it.

5. Software Licensed By Us

- 5.1. This clause refers to software ("our software") of which we own the copyright, or to which we have been granted a right to sub-license.
- 5.2. Where we supply you with our software, it is on the following terms:
 - 5.2.1. We supply it to you under the terms of our core software licence, (*a copy of which is available on request*) and which is incorporated in this agreement.
 - 5.2.2. We warrant that it complies substantially with its description and functions substantially in accordance with the documentation (if any) supplied with it.
 - 5.2.3. We undertake to correct by patch or new release (at our option) that part of it which does not comply, so long as you notify us (with details) of the non-compliance within 30 days, PROVIDED THAT the non-compliance has not been caused by any modification, variation or addition to the Software not performed by or authorised by us, or is caused by the incorrect use, abuse or corruption of the Software or by use of the Software on equipment other than the Equipment specified in the Specification.
 - 5.2.4. Except as otherwise provided in this clause, we make no other representations or warranties and expressly exclude them whether express, implied, statutory or otherwise especially as to quality or fitness of the Software for any particular purpose.
- 5.3. If we supply you with upgrades, or patches those upgrades or patches become incorporated into the Software and are covered by this agreement and the core software licence. New releases are also covered by this agreement and the core software licence. *Your licence to use or transfer any of Our Software ceases as soon as we have supplied you with an upgrade or new release.*
- 5.4. You agree that you will comply in all respects with the terms of the core software licence and that if you fail to comply with those terms, or any term of this agreement then we may terminate the licence.
- 5.5. You agree that you will keep up-to-date and accurate details of the location of all copies of the Software.
- 5.6. You agree to keep details of any assignment of the software licence (and only to assign it in accordance with the licence) and to give us details of any assignee. Upon valid assignment



of the software you agree to destroy all copies of the Software which remain in your possession or under your control. *You should note that any assignment of the software only assigns a bare licence to it to the assignee. The assignee, if it wishes any further rights in relation to the software (for example, the right to bug-fixes, maintenance or support) will have to re-register the software with us, for which an administration fee (set at our discretion) will be required.*

- 5.7. You agree to ensure that our copyright notice is faithfully reproduced on all copies you make of all or any part of the Software.
- 5.8. You acknowledge that the Software is not (unless specified specifically in the quotation) designed for mission-critical or safety-related purposes and should not be used in any such context.
- 5.9. Where we supply Our Software to you, you confirm that you have received adequate demonstration of it prior to entering into this agreement.
- 5.10. We confirm that we have used commercially reasonable efforts to scan Our Software for viruses prior to delivery to you but that you are ultimately responsible for implementing virus checking on your own equipment.

6. Software Licensed by Third Parties

- 6.1. Where we supply software ("third party software") that is not Our Software, we have taken reasonable steps to ensure that it does not infringe the rights of third parties. Other than a failure to comply with that obligation, we are not responsible for any infringement, except that if the infringement relates to the whole (as opposed to the part) of any software supplied under this agreement, we shall (at our option):
 - 6.1.1. replace that software with non-infringing software;
 - 6.1.2. obtain at no cost to you a valid licence to continue to use the software on terms that are no less beneficial to you than the terms on which you were granted the licence; or
 - 6.1.3. refund the licence fee applicable to that software.
- 6.2. In any of those cases, we shall be under no further liability to you in respect of that software.
- 6.3. If we decide that it is not practical to obtain replacement software or a valid licence, this constitutes "unusual circumstances" referred to in clause 10 of the General Terms.
- 6.4. You agree to comply with the terms of any licence relating to Third Party software which will, unless stated otherwise in the quotation, be on the supplier's standard terms and (if applicable to that software) you authorise us to act as your agent to enter into such licence agreement with the third party on your behalf. We make no representation or warranty relating to the terms and effect of such third party licence or licence agreement.

7. Software Warranty

- 7.1. YOU ACKNOWLEDGE THAT SOFTWARE IN GENERAL IS NOT ERROR-FREE AND AGREE THAT THE EXISTENCE OF SUCH ERRORS SHALL NOT CONSTITUTE A BREACH OF THIS LICENCE

- 7.2. IF YOU DISCOVER A MATERIAL ERROR WHICH SUBSTANTIALLY AFFECTS YOUR USE OF THE SOFTWARE AND YOU NOTIFY US OF THE ERROR WITHIN 30 DAYS FROM THE DATE OF DELIVERY OF THE SOFTWARE (THE "WARRANTY PERIOD") WE SHALL AT OUR SOLE OPTION EITHER REFUND THE LICENCE FEE OR USE ALL REASONABLE ENDEAVOURS TO CORRECT BY PATCH OR NEW RELEASE (AT OUR OPTION) THAT PART OF THE SOFTWARE WHICH DOES NOT COMPLY PROVIDED THAT THE NON-COMPLIANCE HAS NOT BEEN CAUSED BY ANY MODIFICATION, VARIATION OR ADDITION TO THE SOFTWARE NOT PERFORMED BY US (OR WITH OUR AUTHORISATION) OR IS CAUSED BY ITS INCORRECT USE, ABUSE OR CORRUPTION OF THE SOFTWARE CAUSED BY THIRD PARTY SOFTWARE.

- 7.2. OUR WARRANTY IN RELATION TO THE FUNCTIONING OF THE SOFTWARE (INCLUDING, IF APPLICABLE, THE DONGLE) ON ANY PARTICULAR SYSTEM ONLY APPLIES WHERE THE SYSTEM COMPLIES WITH OUR HARDWARE AND SOFTWARE COMPATIBILITY LIST AS ISSUED FROM TIME TO TIME

- 7.3. TO THE EXTENT PERMITTED BY THE APPLICABLE LAW, AND SUBJECT TO CLAUSE 7 BELOW, WE DISCLAIM ALL OTHER WARRANTIES WITH RESPECT TO THE SOFTWARE, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

- 7.4. YOU ACKNOWLEDGE THAT THE SOFTWARE IS NOT DESIGNED FOR USE IN MISSION- OR SAFETY-CRITICAL SITUATIONS. [THE ALGORITHMS UPON WHICH IT IS BASED MAY INVOLVE STATISTICAL AND OTHER METHODS OF INTERPOLATION AND EXTRAPOLATION AND VISUAL OR OTHER OUTPUT WHICH IT MAY PRODUCE ARE THEREFORE LIABLE TO ARTEFACTS AND ERRORS INHERENT IN THE USE OF THESE TECHNIQUES. OUTPUT FROM THE SOFTWARE SHOULD ALWAYS BE CONFIRMED AND VERIFIED IN ACCORDANCE WITH RECOGNISED SCIENTIFIC AND EXPERIMENTAL PRACTICE]. WE MAY BE PREPARED TO CREATE A SPECIALLY MODIFIED OR RE-WRITTEN VERSION OF THE SOFTWARE AT EXTRA COST TO COMPLY WITH ANY SAFETY OR MISSION-CRITICAL REQUIREMENTS.

- 7.5. ALTHOUGH WE DO NOT WARRANT THAT THE SOFTWARE IS FREE FROM ALL KNOWN VIRUSES WE HAVE USED COMMERCIALY REASONABLE EFFORTS TO CHECK FOR THE MOST COMMONLY KNOWN VIRUSES PRIOR TO PACKAGING. YOU ARE SOLELY RESPONSIBLE FOR VIRUS SCANNING THE SOFTWARE.

- 7.6. YOU ACKNOWLEDGE THAT THERE MAY BE DISABLING PROGRAMS OR DEVICES IN THE SOFTWARE DESIGNED TO INHIBIT LICENCE INFRINGEMENT.

- 7.7.1. PROVIDED THAT THE DONGLE HAS NOT BEEN MAL-TREATED WE WILL, IF THE DONGLE FAILS, AT OUR OPTION, AND AT ANY TIME DURING THE CURRENCY OF THIS LICENCE EITHER

- 7.7.1.1. REPLACE THE DONGLE; OR

- 7.7.1.2. REPLACE THE SOFTWARE WITH A VERSION OF IDENTICAL OR ENHANCED FUNCTIONALITY BUT WHICH IS NOT PROTECTED BY A DONGLE OR IS PROTECTED BY AN ALTERNATIVE DONGLE.



8. Unlicensed Software

8.1. You acknowledge that it is illegal to use unlicensed software and you hereby grant us permission to enter any of your premises where we reasonably suspect that unlicensed copies of our Software are located and seize copies and/or equipment and/or delete them.

9. Our Liability

- 9.1. We shall not be liable to you for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with this Licence, the Software, its use or otherwise, except to the extent that such liability may not be lawfully excluded under the applicable law.
- 9.2. Notwithstanding the generality of 9.1 above, we expressly exclude liability for indirect, special, incidental or consequential loss or damage or any other loss or damage or claim which may arise in respect of the Software, its use, the Systems or in respect of other equipment or property, or for loss of profit, business, revenue, goodwill or anticipated savings.
- 9.3. If any exclusion contained in this Licence shall be held to be invalid for any reason and the we become liable for loss or damage that may lawfully be limited, that liability shall be limited to the licence fee which you paid for the Software over the course of the twelve months immediately prior to the event (or omission) giving rise to the liability;
- 9.4. We do not exclude liability for death or personal injury which arises as a result of our negligence or the negligence of our employees, agents or authorised representatives and for which we are liable.

10. Configuration of Software

10.1. You acknowledge that the configurations or arrangements of software or data which we have installed may be subject to copyright (and in the absence of our written permission) you are granted no licence to copy that configuration or arrangement onto any system other than the one on which we installed the software.

11. Termination

- 11.1. We may terminate this agreement in respect of all or any of the licences granted under it at any time if:
- 11.1.1. You are in breach of any of the terms of this agreement between us;
- 11.1.2. You are (or any subsequent transferee is) in breach of the terms of any licence granted under it;
- 11.1.3. (if a licence granted hereunder is a periodic licence) we give you notice before renewal of that licence that we do not wish to renew it;
- 11.2. If we terminate this agreement or any licence, that termination shall not affect the rights or obligations of the parties which accrued prior to termination.

12. Compliance with Instructions

12.1. You agree to comply with all reasonable instructions regarding the use of the software, and to provide adequate training to all operators of it.

12.2. You will ensure that the system on which the software is running:

- 12.2.1. is and continues to be well and adequately maintained;
- 12.2.2. is and continues to be contained in the hardware compatibility lists of all suppliers of software intended to be running on that system and in respect of that software;
- 12.2.3. is and continues to be within the hardware and performance specifications required by the suppliers of all software running on the system; and
- 12.2.4. does not contain any extraneous programs, data or hardware which are not reasonably necessary for the use of the system for its intended purpose (*this includes most software downloaded from the internet or contained on magazine cover disks or any games*).
- 12.3. You agree to install patches and upgrades to all software supplied under this agreement (or reasonably necessary for the functioning of software supplied under this agreement) as and when we notify you to do so. You are warned that there may be charges for these patches or upgrades.
- 12.4. You agree to maintain a comprehensive log of all faults or problems encountered in running the software and agree to allow us to see it on request.
- 12.5. Your software and systems will be controlled on a day to day basis by experience technical staff who have the relevant level of necessary experience to deal with the type and nature of the software and equipment being used

13. Installation

- 13.1. Unless explicitly stated on the quotation, we do not agree to install or configure the software.
- 13.2. Where we have agreed to install the software:
- 13.2.1. You will ensure that you have taken a full backup of all programs and data on the equipment before installation;
- 13.2.2. You will ensure that the equipment (and, is appropriate, operating system and other support software) is of a suitable specification for the software;
- 13.2.3. We do not agree to convert or input data unless explicitly agreed in the quotation in which case:
- 13.2.3.1. You agree to ensure that the data to be converted are in a suitable format to be converted as specified in the quotation;
- 13.2.3.2. You agree to check the integrity of data both before and after the conversion process;
- 13.2.3.3. You acknowledge that certain aspects of the data may not be amenable to conversion.
- 13.3. The Contracts (Rights of Third Parties) Act 1999 is expressly excluded from this Agreement
- 13.4. If any Clause within this Agreement is deemed to be invalid then the particular offending clause in question shall be removed by the remainder of the Agreement shall stand
- 13.5. This Agreement is governed by English Law