



The buyer's attention is in particular drawn to the provisions of condition 8.5.

## INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

**Buyer:** the person, firm or company who purchases the Products from the Company.

**Company:** MHT Technology Limited registered in England and Wales under company number 2920632.

**Contract:** any contract between the Company and the Buyer for the sale and purchase of the Products, incorporating these conditions.

**Delivery Point:** the place where delivery of the Products is to take place under condition 4.

**EULA:** the end user licence agreement upon which the Software is licenced to the Buyer, a copy of which is attached to these Conditions where Software forms part of the Products.

**Incoterms 2000:** the 2000 version of the international trade terms of the International Chamber of Commerce.

**Products:** any goods or products (including hardware, equipment and Software) agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).

**Software:** the computer programmes in the form of a set of operating instructions and data which may be coded into micro-electronic machine readable form for the purpose of processing data, self verification and the control of associated Products in response to such data.

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and in the plural include the singular.

1.4 A reference to one gender includes a reference to the other gender.

1.5 Condition headings do not affect the interpretation of these conditions.

## 2. APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.3 and condition 2.8 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 These conditions apply to all the Company's sales and any variation to these conditions and any representations about the Products shall have no effect unless expressly agreed in writing and signed by a

director of the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

2.4 Each order or acceptance of a quotation for Products by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Products subject to these conditions.

2.5 No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Products to the Buyer.

2.6 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate and shall indemnify the Company against any losses caused as a result of a breach of this clause.

2.7 Any quotation is given on the basis that no Contract shall come into existence until the Company despatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.

2.8 The Software is licensed subject to these terms and the EULA. Where there is any conflict between the terms of these conditions and the EULA, the EULA shall prevail.

## 3. SPECIFICATION

3.1 The specification, quantity and description of the Products shall be as set out in the Company's quotation or acknowledgement of order.

3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Products described in them. They shall not form part of the Contract and this is not a sale by sample. The Company gives no warranties and makes no representations to the Buyer in relation to the country of origin of the Products, unless confirmed in writing by a director of the Company.

3.3 If any specification, process or materials supplied by the Buyer are applied to or used in connection with the Products, the Buyer shall indemnify the Company against any loss whatsoever suffered by the Company as a result of the use of the specification, process or materials.

3.4 The Company may change the specification or design of the Products where such changes are required to conform with any applicable statutory or EC requirements.

## 4. DELIVERY

4.1 Unless otherwise agreed in writing by the Company, delivery of the Products shall be ex-works (as defined in the Incoterms 2000) at the Company's place of business.

4.2 Any dates specified by the Company for delivery of the Products are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

- 4.3 If for any reason the Buyer fails to accept delivery of any of the Products when they are ready for delivery, or the Company is unable to deliver the Products on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:
- (a) risk in the Products shall pass to the Buyer (including for loss or damage caused by the Company's negligence);
  - (b) the Products shall be deemed to have been delivered; and
  - (c) the Company may store the Products until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance)
  - (d) the Company may sell the Products at the best price readily available and (after deducting all reasonable expenses) account to the Buyer for the excess over the Price under the Contract or charge the Buyer for any shortfall below the price under the Contract.
- 4.4 The Buyer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for loading the Products.
- 4.5 The Company may deliver the Products by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
- 4.6 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.
- 4.7 The quantity of any consignment of Products as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 4.8 The Company shall not be liable for any non-delivery of Products (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-delivery within 14 days of the date when the Products would in the ordinary course of events have been received.
- 4.9 Any liability of the Company for non-delivery of the Products shall be limited to replacing the Products within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Products.
- 4.10 The Company may invoice the Buyer once the Products are available for delivery.
- 4.11 Where Products are to be exported:
- (a) The Buyer is responsible for satisfying itself that the Products comply with all laws and regulations applicable to their intended use in the country to which they are exported;
  - (b) the Buyer is responsible for the procurement of any import or export licence required in relation to the Products;
  - (c) the Contract shall be FCA as defined in the Incoterms 2000 as modified by these Conditions.
- 4.12 If the order provides for testing or inspection of the Products by or on behalf of the Buyer prior to delivery, whether at the Company's premises or elsewhere, the Company shall give the Buyer notice that the Products are available for testing and the Buyer shall have 7 days to perform such inspections. If the Buyer fails to do so, or within 14 days of the Buyer having carried out the inspection, the Buyer does not notify the Company in writing that the Products are not in accordance with the order and detailing the discrepancy complained of, then the Buyer shall be conclusively deemed to have accepted the Products and shall not be entitled to reject the Products or claim damages or compensation from the Company on the grounds of any loss or defect which such testing or inspection revealed or would have revealed had the testing or inspection been carried out.
- 5. RISK/TITLE**
- 5.1 The Products are at the risk of the Buyer from the time of delivery.
- 5.2 Ownership of the Products shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- (a) the Products; and
  - (b) all other sums which are or which become due to the Company from the Buyer on any account.
- 5.3 Until ownership of the Products has passed to the Buyer, the Buyer shall:
- (a) hold the Products on a fiduciary basis as the Company's bailee;
  - (b) store the Products (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
  - (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Products; and
  - (d) maintain the Products in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company.
- 5.4 The Buyer's right to possession of the Products shall terminate immediately if:
- (a) the Buyer 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) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
  - (b) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
  - (c) the Buyer encumbers or in any way charges any of the Products.
- 5.5 The Company shall be entitled to recover payment for the Products notwithstanding that ownership of any of the Products has not passed from the Company.

- 5.6 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Products are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- 5.7 The Buyer is entitled to use the Products in the ordinary course of its business before title has passed.
- 5.8 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition 5 shall remain in effect.
- 6. PRICE AND PAYMENT**
- 6.1 Unless otherwise agreed by the Company in writing, the price for the Products shall be the price set out in the Company's quotation and all prices shall be on an EXW (as defined in Incoterms 2000) basis.
- 6.2 The price for the Products shall be exclusive of any value added tax and other taxes and duties and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Buyer shall pay in addition when it is due to pay for the Products.
- 6.3 Subject to condition 6.5, payment of the price for the Products is due in pounds sterling within 30 days of the date of the invoice. Time for payment shall be of the essence.
- 6.4 No payment shall be deemed to have been received until the Company has received cleared funds.
- 6.5 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.
- 6.6 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.
- 6.7 If the Buyer fails to pay the Company any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 and suspend future deliveries to the Buyer.
- 7. QUALITY**
- 7.1 Where the Company is not the manufacturer of the Products, the Company shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company.
- 7.2 The Company warrants that (subject to the other provisions of these conditions) on delivery and for a period of 12 months thereafter the Products shall:
- be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
  - be reasonably fit for the purpose for which they were designed.
- 7.3 The Company shall not be liable for a breach of any of the warranties in condition 7.2 unless:
- the Buyer gives written notice of the defect to the Company within 12 months of delivery, and, if the defect is as a result of damage in transit to the carrier, within 14 days of the time when the Buyer discovers or ought to have discovered the defect; and
  - the Company is given a reasonable opportunity after receiving the notice of examining such Products and the Buyer (if asked to do so by the Company) returns such Products to the Company's place of business at the Buyer's cost for the examination to take place there.
- 7.4 If after investigation the defect is found not to be the Company's responsibility under this clause, the Company may charge the Buyer for all reasonable expenses incurred by the Company in relation to the investigation of the defect.
- 7.5 The Company shall not be liable for a breach of any of the warranties in condition 7.2 if:
- the Buyer makes any further use of such Products after giving such notice; or
  - the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products or (if there are none) good trade practice; or
  - the Buyer alters or repairs such Products without the written consent of the Company.
- 7.6 Subject to condition 7.3 and condition 7.5, if any of the Products do not conform with any of the warranties in condition 7.2 the Company shall at its option repair or replace such Products (or the defective part) or refund the price of such Products at the pro rata Contract rate provided that, if the Company so requests, the Buyer shall, at the Buyer's expense, return the Products or the part of such Products which is defective to the Company.
- 7.7 If the Company complies with condition 7.6 it shall have no further liability for a breach of any of the warranties in condition 7.2 in respect of such Products.
- 8. LIMITATION OF LIABILITY**
- 8.1 Subject to condition 4 and condition 7, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- any breach of these conditions;
  - any use made or resale by the Buyer of any of the Products, or of any product incorporating any of the Products; and
  - any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 8.2 The Company shall have 28 days to remedy any breach of these conditions and if done so, the Company shall have no further liability to the Buyer.
- 8.3 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 8.4 Nothing in these conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence, or under section 2(3), Consumer Protection Act 1987, or

for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or for fraud or fraudulent misrepresentation.

8.5 Subject to conditions 8.2, 8.3 and 8.4:

- (a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
- (b) the Company shall not be liable to the Buyer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

8.6 The Company shall have no liability for any defect in the Products arising from fair wear and tear, wilful damage, negligence on the part of the Buyer, abnormal working conditions or failure to follow the Company's instructions for use or storage.

8.7 The Company shall make every effort to ensure the accuracy of all documentation associated with the Products, however, accepts no liability in contract, tort, under statute or otherwise for any loss or damage suffered arising directly or indirectly from any error or omission in such documentation, technical data or literature.

## 9. GENERAL

9.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

9.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

9.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

9.4 The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Products ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or 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 30 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract

9.5 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

9.6 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

9.7 The Company may assign the Contract or any part of it to any person, firm or company. The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

9.8 Any notice or other communication required to be given under these conditions, shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier, to each party required to receive the notice or communication at its registered office or principal place of business.

9.9 Any notice or other communication shall be deemed to have been duly received:

- (a) if delivered personally, when left at the address and for the contact referred to in this clause; or
- (b) if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; or
- (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

9.10 A notice or other communication required to be given under these conditions shall not be validly given if sent by e-mail only.

9.11 This 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 in accordance with English law, and the parties submit to the exclusive jurisdiction of the English courts.