

Standard terms & conditions

1.0 GENERAL

These Terms and Conditions apply to and govern every supply of Systems and services by Incremental Group Limited whose principal office is at The Garment Factory, 10 Montrose Street, Glasgow, G1 1RE (hereinafter called "Incremental Group") to any customer (hereinafter called "the Client") and shall be incorporated in every contract for the supply by Incremental Group of Systems and services unless otherwise agreed in writing by a Director on behalf of Incremental Group.

2.0 DEFINITIONS

In these Terms and Conditions:

- 2.1 **Bespoke Software** shall mean the suite of programs and accompanying documentation written by Incremental Group for which the Client has paid a fee including any extensions, customisations or interfaces to Third-Party software provided that they were written by Incremental Group.
- 2.2 **Library Programs** shall mean all software not specifically developed for the Client, always excluding Third Party Software.
- 2.3 **Third-Party Software** shall mean any software from a Third Party Software Vendor which may be supplied by Incremental Group to the Client, for which the licence agreements, terms and conditions of supply and performance warranties issued and published from time to time by the Third Party Software Vendor shall solely apply.
- 2.4 **Hardware** shall mean any items of computer equipment or associated peripherals or System equipment purchased from Incremental Group but not manufactured by Incremental Group, for which the specifications, terms and conditions and product performance warranties issued and published from time to time by the Hardware vendor shall solely apply.
- 2.5 **System** shall mean the combination of Hardware, Bespoke Software, Library Programs and Third-Party Software supplied by Incremental Group to meet the requirements of the Specification.
- 2.6 **Specification** shall mean the Incremental Group proposal referenced in the order or Incremental Group order acceptance or the agreed project specification issued by Incremental Group as a result of the analysis workshops, which shall supersede the proposal and the order; which details the operation, functionality, deliverables and scope of the System or services to be provided.
- 2.7 **End User** shall mean the Client or Client's agent responsible for the Use of the System.
- 2.8 **Use** shall mean copying any portion of any program into computer equipment for processing or using any program in the course of operation.
- 2.9 **The Client** shall mean the party to whom the quotation is issued or, as the case requires, the party contracting with Incremental Group for the supply of Systems or services.

3.0 ORDERS

All orders are subject to written acceptance by Incremental Group, whether or not Incremental Group has issued a quotation.

4.0 PRICE AND PAYMENT

- 4.1 Prices of Systems and services shall be in accordance with Incremental Group's Order Acceptance. Prices stated are exclusive of Value Added Tax, delivery and insurance charges. Travel and subsistence expenses will be charged in addition at cost as incurred unless otherwise stated in the quotation document.
- 4.2 Payment shall be made by the Client to Incremental Group as defined herein or in accordance with the payment schedule defined in the quotation or agreed in writing between Incremental Group and the Client or as invoiced by Incremental Group. Payments due against one invoice may not be set off against another unless agreed in writing by Incremental Group. Services shall be invoiced monthly. Payment of invoices for Third Party hardware, services or software is due within fourteen days of delivery of goods or services to Incremental Group. All other invoices are due for payment within thirty days from date of invoice.

5.0 DELIVERY

- 5.1 Incremental Group shall endeavour to deliver services and to have deliverable items ready for delivery on or before the respective dates agreed from time to time between Incremental Group and the Client. All dates are based on information and estimates available at the time when the dates are agreed. Incremental Group shall not be liable in any way for delay however caused.
- 5.1.1 For Third-Party Software or Hardware or services supplied, delivery is deemed to have been completed upon delivery thereof to the Client or Incremental Group.

6.0 SERVICES AND BESPOKE SOFTWARE DEVELOPMENT

- 6.1 The following provisions apply to the supply of Services and Bespoke Software Development:
 - 6.1.1 The Client shall appoint a representative who shall coordinate the performance of the work to be performed hereunder. Incremental Group will appoint a Project Manager who shall provide liaison with the Client. Each party may change its representative at any time upon written notice.
 - 6.1.2 Incremental Group shall be responsible for the development of the Bespoke Software and provision of services defined in the Specification. Incremental Group may select any qualified Incremental Group employees or sub-contractors to perform the work thereunder, to re-assign Incremental Group employees or sub-contractors during the performance of the work and to perform similar work for other parties using such Incremental Group employees or sub-contractors.
 - 6.1.3 Incremental Group hereby grants to the Client, subject to the Client's compliance with the licence provisions included or referred to herein, a non-exclusive, non-transferable, licence to use Incremental Group's intellectual property comprising software programs constituting Bespoke Software or Library Programs on Client's computer equipment in consideration for the payment of Incremental Group's licence fees or fees for services to develop the software. The Client may copy or instruct a third party, (Client's agent) to copy the Bespoke Software or Library Programs for archival or back-up purposes; and to modify the Bespoke Software or Library Programs provided always that the Bespoke Software or Library Programs or portions thereof are not distributed to third parties, licensed or sold by the Client or its third party (Client's agent).
- The licence to use Bespoke Software or Library Programs granted herein will be effective from the date of payment for any Bespoke Software or Library Programs and shall remain in force until the Client discontinues use and erases Bespoke Software or Library Programs from all computer equipment and media. Bespoke Software or Library Programs and any modifications made to them shall be and remain the intellectual property of Incremental Group.

6.2 Access

- 6.2.1 Access to relevant information, personnel and facilities will be provided by the Client to Incremental Group personnel in order to facilitate performance hereunder in a timely manner during normal working hours for so long as required to enable Incremental Group to perform its obligations under the Contract.

7.0 CONFIDENTIALITY AND INTELLECTUAL PROPERTY

- 7.1 Each of Incremental Group and the Client shall protect the confidential information and intellectual property of the other party which is clearly designated in writing as being confidential or intellectual property, prudently and certainly by using the same degree of care as it takes to preserve and safeguard its own confidential

information or intellectual property. Such obligation of confidentiality shall continue for three (3) years from completion of the Contract for supply of the Systems or services or from termination thereof, howsoever caused, such obligation for protecting intellectual property shall continue until all copies of the media containing the intellectual property are erased or returned to the owning Party.

7.2 Neither Incremental Group nor the Client shall be required to treat as confidential any information which

- (a) is already in its possession at the date of disclosure, or
- (b) is or comes into the public domain, or
- (c) is independently developed by the receiving party or
- (d) is rightfully obtained from any third party(s) without restriction.

8.0 DELAY

Neither Incremental Group nor the Client shall be liable the one to the other for delays or failure in performance of any of its obligations under the Contract due to causes beyond its reasonable control. Each party shall however take all reasonable steps to avoid such delays or failure.

9.0 CHANGES

The Client may request changes to the Specification at any time on giving reasonable notice to Incremental Group provided that such changes shall only become effective if contained in a change order signed by the Client setting forth as applicable the changes in the System or services to be carried out, variation to delivery schedule and prices.

10.0 RISK AND TITLE

10.1 Title to the Hardware shall pass from Incremental Group to the Client upon payment of that part of the price properly attributable to the Hardware sold.

10.2 Notwithstanding that title shall not pass to the Client except as provided above risk of loss and damage to Hardware and Third-Party Software shall pass to the Client upon delivery.

10.3 The Client shall be responsible for ensuring that the use of all Incremental Group and Third-Party Software complies with the terms and conditions of the licence agreement for such software as specified by Incremental Group and the Third-Party Software Vendor.

11.0 WARRANTY

11.1 Subject to the provisions of this clause:

- a) Incremental Group shall correct free of charge any errors in execution of the System meeting the requirements of the Specification due to defects in Incremental Group's workmanship provided that the Client shall have given notification to Incremental Group of any such deviation or error within 90 days of delivery or under the terms of clause 11.2 and the rectification work is carried out at Incremental Group offices during Incremental Group's normal working hours.
- b) Incremental Group shall not be responsible for the performance, specification, warranties or terms and conditions of supply for Third Party Software, Services or Hardware supplied. Incremental Group shall use reasonable endeavours to pass on to the Client the Hardware Supplier's and any Third-Party Software vendor's warranty in respect of all Hardware and Software products supplied. All other warranties and conditions or other terms are expressly excluded in the supply of Hardware and Third-Party Software.

11.2 Provision of the warranty shall be extended to the period for which the Client has in operation the relevant Incremental Group support and software maintenance agreements and Third-Party Software maintenance agreements and Hardware maintenance agreements.

11.3 Provision of the warranty is subject to the Client upgrading all licensed software and where appropriate hardware to the manufacturer's recommended version or service pack which rectifies the error or is necessary for the manufacturer to provide support.

11.4 Incremental Group does not warrant or undertake that the operation of the System will be uninterrupted or error free or that the System will comply with any functional or performance parameters other than those defined in the Specification.

11.5 Incremental Group warrants that services supplied on an hourly or day rate basis will be performed with reasonable skill and care consistent with generally accepted computer software services industry practices. Clauses 11.1 and 11.2 herein shall not apply for services supplied on an hourly or day rate basis. All other warranties and conditions or other terms are expressly excluded.

11.6 The undertakings contained in this Clause are given in lieu of all representations, warranties, conditions and guarantees whether expressed or implied all of which are hereby excluded.

12.0 REMEDIES

The remedies provided herein shall be the Client's sole and exclusive remedies and Incremental Group shall not otherwise be liable to the Client for any direct or indirect damage or consequential losses, however caused. The foregoing limitation of liability shall not apply to personal injury, death or damage or loss to property resulting from Incremental Group's negligence provided that Incremental Group's liability hereunder shall not exceed the sum of £1,000,000 for any one incident, in excess of which sum the Client shall indemnify Incremental Group.

13.0 TERMINATION

13.1 In addition to any rights of termination specified herein, the Contract for supply may be terminated by Incremental Group in the event of:

- 13.1.1 failure by the Client to make payment of any sum due within 14 days of receipt of notice calling for payment of sums due under any Contract between the Client and Incremental Group, or to perform any other material obligation under the Contract within 30 days of receipt of notice of such failure, or
- 13.1.2 any proceeding or anticipated proceeding in bankruptcy, insolvency or winding up by or against the Client or the appointment of an assignee for the benefit of creditors or of a receiver or administrator or of any similar situation arising.

13.2 The Contract for supply may be terminated by the Client or Incremental Group upon giving one month written notice to the other party at any time after completion of any agreed initial Contract period.

13.2.1 Upon termination of the contract the Client shall pay to Incremental Group the amounts for all items ordered for services, Hardware, Bespoke Software and Third-Party Software whether delivered or not. Notwithstanding the foregoing Incremental Group shall use reasonable endeavours for the Client to obtain from any Third Party Software vendor or Hardware supplier, agreement to waive charges for products and service ordered for the Client's project and not yet delivered.

13.3 Any termination shall be without prejudice to the rights of Incremental Group in respect of any antecedent breach or non-performance of the Client's obligations hereunder.

14.0 MISCELLANEOUS

14.1 Notices shall be in writing and shall be considered given upon personal delivery confirmed by a receipt or within three (3) days of mailing by recorded delivery and appropriately addressed to the other party's appointed representative.

14.2 Neither Incremental Group nor the Client shall directly or indirectly solicit or offer employment to any of the other party's personnel associated with the work to be performed hereunder during the period the work is being performed and up to twelve (12) months after completion thereof or after termination of the Contract however caused except by written mutual consent.

- 14.3 Any failure by Incremental Group to exercise any of its rights hereunder shall not constitute or be deemed a waiver or forfeiture of such rights.
- 14.4 These Terms and Conditions shall be in all respects governed by and construed in accordance with the laws of Scotland. The courts of justice in Scotland shall have jurisdiction in all matters pertaining to or arising out of the Contract.