



Software Box Ltd Terms and Conditions

1. DEFINITIONS

- a. "Company" means SBL, East Moor House, Green Park Business Centre, Sutton-on-the-Forest, YORK, YO61 1ET and any subsidiary or associated Company.
- b. "Conditions" means the terms and conditions set out below.
- c. "Confidential Information" means information relating to the business affairs and methods of working of either party, the terms of the contract and any other information of a commercial secret or proprietary nature.
- d. "Customer" means the party to whom the Company agrees to supply products and or Services in accordance with these terms and conditions.
- e. "Intellectual Property" means all intellectual and property rights.
- f. "Order" means the Customer's written instructions to the Company to supply a quantity of product or services at a set price on the relevant Customer purchase order from time to time.
- g. "Price" means the price payable for the products or services under any order to the company as set out on the order and excludes VAT, carriage, packaging and insurance.
- h. "Products" means goods including but not limited to computer software, hardware items provided by the Company to the Customer's order as listed on a Purchase Order in accordance with these terms and conditions.
- i. "Purchase Order Form" means the Customers standard form for orders and signed by the Customer.
- j. "Services" means all services supplied by the Company.
- k. "Third Party Software" means all software owned by or licensed to the Customer from a third party (whether or not supplied by the Company and which comprises part of the products/services).

Any reference in these conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

2. CONDITIONS APPLICABLE

- a. The Company's quotations are not binding upon the Company and a contract shall only come into place upon acceptance by the Company of an order placed by the Customer. Acceptance shall be by means of written notice of acceptance or by delivery of the goods.
- b. Unless otherwise agreed in writing the products are supplied in accordance with the manufacturers' standard current specifications as these may be improved, substituted, or modified.
- c. Notwithstanding that a contract has come into being the Company reserves the right by giving notice to the Customer at any time before delivery to increase the price or to alter the specification to reflect any increase in the cost to the Company or unavailability of products which is due to any factor beyond the control of the Company. Including without limitation increases in cost of labour or materials and any change in delivery dates quantities and specifications for the products and or services requested by the Customer or failure of the Customer to give the Company adequate instruction or information.

- d. The Company will not be liable in respect of any loss or damage caused by or resulting from any variation for whatever reason in the manufacturer's specification or technical data and will not be liable for any damages arising from curtailment or cessation of supply following such variation. The Company will use all reasonable endeavours to advise the Customer of any such impending variation as soon as it receives such notice from the manufacturer.
- e. The contract shall be subject to the conditions which shall apply to all contracts for the supply of products and/or services by the Company to the exclusion of all other terms and conditions including any terms and conditions which the Customer may purport to apply under any purchase order, confirmation of order or other similar document.
- f. All orders for Products and/or Services shall be deemed an offer by the Customer to purchase Products and or Services from the Company pursuant to these conditions.
- g. Acceptance of delivery of products and or services shall be deemed to be acceptance of these Conditions.
- h. Any variation to the Conditions including any special terms and conditions agreed between the parties shall be inapplicable unless agreed in writing by the Company and in particular but without limitation where the Customer requires the Products and or Services for a particular purpose the Company shall be deemed to have no notice of such purpose unless the purpose is agreed by the Customer and Company in writing and the Company and the Customer acknowledge that there is no usage or course of trading in existence which could affect the terms of the contract in any way.
- i. These conditions represent the whole of the agreement between the Company and the Customer. They supersede any other conditions previously issued.

3. INDEPENDENT CONTRACTOR

- a. The relationship between the Company and the Customer is that of independent contractor. Neither party is the Agent of the other nor does either party have any authority to make any contract or make any obligation expressly or implied in the name of the other party without that parties prior written consent for express purpose connected with the performance of the Contract.

4. DELIVERY

- a. Time of Delivery shall not be of the essence of the Contract. The Company will make reasonable efforts to deliver the products and/or perform the services in accordance with any time limit outlined in any quotation provided. Where no time limit has been specified then the Company will make reasonable efforts to deliver the product and or begin the services within 60 days of acceptance of the Order by the Company. Provided that the Company meets the time limits set out in this clause no delay in delivery shall entitle the Customer to repudiate or cancel the Contract. In no event shall the Company be liable for any damages or penalty for delay in despatch or delivery when such delay is because of conditions beyond the Company's reasonable control.
- b. The Products and Services may be supplied in separate instalments and such separate instalments may be invoiced and if invoiced shall be paid for in accordance

with the provisions of the contract. The failure by the Customer to pay for any or all of the said instalments shall entitle the Company at its sole discretion without notice to suspend further performance of the Contract pending payment and/or treat the contract as repudiated by the Customer.

- c. Delivery of the Products and/or Services shall be made to the Customers address. The Customer shall make all arrangements necessary to take delivery, and arrange any security passes needed.
- d. Risk shall pass to the Customer upon receipt by him of the products. The Company will insure goods in transit. The Company will not be responsible for any loss, damage, and deterioration of the goods except in the event of negligence by the Company. In any event, the limit of liability shall be the value of the goods.
- e. The Company shall not be liable to the Customer for any loss or damage whether arising directly or indirectly from the late delivery or short delivery of the Products. If short delivery should take place then the Customer undertakes not to reject the products but to accept the products as part performance of the contract.
- f. If the Customer fails to take delivery of the products for any reason then the Company shall be entitled to charge the Customer a reasonable fee for storage.
- g. Without Prejudice, the Customer shall inspect the goods upon delivery and shall within 7 days notify the Company in writing of any shortfall or non-compliance.
- h. If the Products ordered by the Customer become unavailable for any reason then the Company may substitute an alternate or equivalent item and the Customer shall not unreasonably withhold acceptance of delivery.

5. CANCELLATION AND RESCHEDULING

- a. Any request by the Customer for cancellation of any order or part order, or for the rescheduling of deliveries will only be considered by the Company if made at least 48 hours before despatch of the products. Cancellation shall be subject to acceptance by the Company at its sole discretion and may be subject to a reasonable Administrative Charge. The Customer hereby agrees to indemnify the Company against all loss, costs including the cost of labour and materials used and overheads incurred) damages, charges and expenses arising out of the order and its cancellation or rescheduling. In the case of a training course, cancellation will be subject to the following scale:
 - i. Within 15 working days of the start of the course – a charge of twenty-five pounds
 - ii. Within 10 working days of the start of the course – a charge of 50% of the course fees
 - iii. Within 5 working days of the start of the course – a charge of 75% of the course fees

6. RETURNS

- a. The Company reserves the right to levy an administrative charge of £25 in respect of the rotation of Products and Returns.
- b. Returns must be made subject to all of the following:
 - i. Prior authorization having been obtained from the Company which will be given at its sole discretion.

- ii. Within 7 days of the date of the invoice, excepting Microsoft Select, Enterprise and similar volume Licence Agreement transactions, which may only be terminated in line with Microsoft's published Terms and Conditions.
- iii. Subject to the stock rotation policies of the product authors and or manufacturers.
- iv. The products being properly packed.
- v. The Products being in saleable condition.
- vi. The products being accompanied by a detailed packing list.
- vii. The products being covered by Warranty see clause 12.
- c. The Company reserves the right to reject any returned products which do not comply with the conditions set out in Clause 6.b.
- d. If the Company nevertheless agrees to accept any products returned in a non-saleable condition the Company reserves the right to charge the cost to the Customer of bringing the products to a saleable condition.

7. PROVISION OF SERVICES

- a. The Customer hereby authorises the Company to provide the services described upon the purchase order.
- b. The Customer acknowledges and accepts that the performance by the Company of certain aspects of services may carry a risk to the Customer of loss of data. The Customer warrants that it will insure against loss that may be suffered as a result of the performance of the services and undertakes all appropriate data and application backup procedures prior to any work being carried out.
- c. The Customer warrants and undertakes that it has obtained from all persons including third parties all necessary approvals and authorities required to allow the Company access to all Information Technology networks and systems used by the Customer and any third party in any relevant jurisdiction in which the Customer operates and in which the Services are performed (including but not limited to the Computer Misuse Act 1990) and any contract governing the use of such networks and systems.
- d. The Customer warrants and accepts that the Company shall be entitled to act upon all information and directions supplied to the Company by any of the Customer's employees.
- e. The Customer will provide such of its facilities to the Company (free of charge and on the same basis as it would provide similar facilities to its employees) as may reasonably be required by the Company to provide the services including:
 - i. Access to and use of the Customer's equipment and information records.
 - ii. Access to and timely cooperation of the Customer's employee's contractor's consultant's agents and representatives.
 - iii. To the extent that the Company needs to work on the Customer's premises access to the relevant areas of the premises reasonably required to provide the services.
 - iv. The Customer will provide a safe working environment as defined by Health and Safety legislation.
- f. All intellectual property arising out of any consultancy development or other work undertaken by the Company in connection with the provision of the services shall from the time it arises be the property of the Company.

- g. The Customer acknowledges that any report produced by the company as a result of the Services work relates only to the Customer's computer network and configuration at the time the work was performed. The Company cannot guarantee that the report provides details of all risks and threats to the Customer's computer network.
- h. The Company will appoint a Project Contact who shall be the principal point of contact and shall be responsible for the provision of the services.
- i. The Customer will appoint a Project Contact who shall be the principal point of contact.
- j. The Company shall not be responsible for any loss, damage arising out of necessary rescheduling of the services arising through circumstances beyond the Company's control.

8. PRICES

- a. Catalogues, price lists and other advertising literature material as used by the Company are intended only as an indication of the price and range of goods offered and no prices, description or other particulars contained therein shall be binding upon the Company.
- b. All prices are exclusive of Value Added Tax. All such taxes are payable by the Customer and will be applied in accordance with UK Legislation in force at the tax point date.

9. PAYMENT TERMS

- a. Invoices will be raised and dated by the Company on the date of despatch of the Products and /or services. Invoices will be payable within 30 days of invoice date.
- b. The Customer shall pay all accounts in full and not exercise any rights of set off or counter claim against invoices submitted by the Company.
- c. Interest on overdue Monies shall accrue from the date when payment becomes due from day to day until the date of payment at the rate prescribed in the Statutory Instruments linked to the late payment of Commercial Debts (Interest) Act 1998 and shall accrue at such rate after as well as before any judgement.
- d. The Company reserves the right to cease supplies of products and or services at any time. On such cessation of supplies the Company reserves the right to withdraw any credit facility such that the whole of the Customer's Account becomes due for payment forthwith.

10. RETENTION OF TITLE

- a. Notwithstanding despatch and the passing of risk in any and all products to the Customer pursuant to the clause 4.d and any other provision of these conditions, title to the products shall not pass to the Customer until the Company has received in cash or cleared funds payment in full of the price of the products or services and all of the products and or services agreed to be sold by the Company to the Customer for which payment is due.
- b. Until the title to the products passes to the Customer, the Customer shall hold the products as the Company's fiduciary agent and bailee and shall keep the products properly stored and identified as the Company's property.

- c. Until such time as the title to the products passes to the Customer the Company shall retain the right to require the Customer to deliver up the products in resalable condition and if he fails to do so the Company shall retain the right to enter any premises where the products are stored and recover the Company's products. This clause shall take precedence over any clause to the contrary in the Customer's sales contract if the Customer has sold the products on.

11. PROPRIETARY RIGHTS IN SOFTWARE PRODUCTS

- a. The Customer hereby acknowledges that any proprietary rights in any third party software products supplied hereunder including but not limited to any title or ownership rights, patent rights, copyright, and trade secret rights shall at all times and for all purposes vest and remain vested in the Third Party Software owner.
- b. The Customer hereby acknowledges that it is its sole responsibility to comply with any terms and conditions of licence attaching to third party products supplied and delivered by the Company including if so required the execution of a software licence agreement. The Customer is hereby notified that failure to comply with such terms and conditions could result in the Customer being refused a software licence or having the same revoked by the proprietary owner. The Customer further agrees to indemnify the Company in respect of any costs charges or expenses incurred by the Company following such action by the Third Party Software owner as a result of a breach by the Customer of such conditions.

12. WARRANTY

- a. The Company warrants that it has good title to or license to supply all products to the Customer.
- b. The Company warrants that all services will be provided with reasonable skill and care.
- c. The Customer warrants that it has complied its obligation stated in Clause 7.
- d. If any part of any hardware products should prove defective in materials or workmanship under normal operation then such products will be repaired or replaced only in accordance with the warranty cover and terms provided by the manufacturer of the products PROVIDED THAT no unauthorised modifications to the product or the system of which the products form part have taken place. The Company is not responsible for the cost of labour or other expenses incurred in repairing or replacing defective or non-conforming parts.
- e. All software products are supplied 'as is'. In the event that any such software product should fail to conform to its current product description then the sole obligation of the Company in connection with the supply of software products is to use all reasonable endeavours to obtain and supply a correction or a corrected version from the manufacturer concerned provided that the Customer notifies the Company of any such non-conformity within 14 days of the date of delivery of the product.
- f. Except as specifically allowed in this clause 12 the Company disclaims and excludes all other warranties whether by statute or otherwise including but not limited to the warranties of description, design, satisfactory quality and fitness for any particular purpose or arising from any previous course of dealing, usage or trade practice.

13. CONFIDENTIALITY

- a. Each party will hold the other's Confidential Information in confidence at all times and will only use such information for the purpose of performing its obligations under the contract and will not disclose divulge or release the same to any person except to those of its employees agents advisors and sub-contractors as the contract shall reasonably require.
- b. Confidential information does not include information generally available to the public, information obtained or developed independently by either party without reference to the confidential information or information legitimately obtained from third parties.
- c. Each party will ensure that those of its employees, agents, advisors and subcontractors who are involved in the contract are made aware of the confidential nature of the information concerned and are under similar obligations of confidentiality.
- d. It shall not be a breach of this clause to disclose confidential information which is legally obliged to disclose provided that the disclosure has not been brought about by a wrongful act or omission of the party of whom disclosure is demanded, and provided that the party informs the other of disclosure.

14. LIABILITY

- a. Subject only to clause 14.3 the Company's entire liability to the Customer whether in contract, tort, or otherwise flowing from any one event or series of events shall not exceed the price.
- b. The Company shall not be liable to the Customer for any of the following losses which may arise by reason of any breach of the terms and conditions or implied warranty condition or other term any representation or any duty of any kind imposed on the Company by operation of law:
 - i. Any loss of anticipated profits or expected future business.
 - ii. Damage to reputation or goodwill.
 - iii. Costs of any third party.
 - iv. Loss of any order or contract.
 - v. Consequential loss.
 - vi. Loss and/or reconstruction of data.
 - vii. Business interruption.

In addition, the Customer is solely responsible for obtaining his own insurance against such losses.

- c. Nothing in this clause or elsewhere in the conditions will exclude or limit any liability either party may have to the other under any indemnities in the conditions for fraudulent misrepresentation breach of any terms as to title, and quiet possession implied by statute or at common law, or death or personal injury arising from the Company's negligence as such terms are used under the Unfair Contract Terms Act 1977.
- d. The Company shall not be liable for the performance, quality, fitness for purpose of Product supplied, or for any maintenance provided to the Company or Customer by third parties save to the extent of any warranties given to the Company by in the

case of hardware and appliances by the manufacturer and in the case of software by the product author or in the case of maintenance by the maintainer.

- e. This clause shall prevail over any other provision of the Conditions.

15. EXPORT LIMITATION

- a. Having regard to the prevailing statutory or other UK Government regulations in force from time to time and in the case of product originating in the United States of America to the regulations of the US Department of Commerce the Customer will not re-export directly or indirectly any products without having first obtained any necessary consents or authorisations as may be required by any applicable Government regulations.

16. BREACH

- a. Upon Breach of the conditions by the Customer, the Company reserves the right to withhold Products and or services from the Customer and may invalidate any agreements for future supply notwithstanding any agreements entered into by the Customer with a third party.

17. NON-SOLICITATION

- a. The Customer agrees and undertakes that it will not solicit or endeavour to solicit the services of any staff member of the Company with whom it has had dealings during a period of three months prior to its approach.

18. DATA PROTECTION

- a. The Customer agrees that the Company may make such enquiries and searches and obtain such references as it considers reasonable from any person firm or Company including credit reference agencies and further agrees that the Company may keep a record of such search on its files.

19. TERMINATION

- a. If the Customer makes any voluntary arrangement with its creditors or becomes subject to an administrative order or being a firm becomes bankrupt or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or an encumbrancer takes possession of or a receiver is appointed to any of the assets or property of the Customer or the Customer ceases or threatens to cease to carry on business then the Company shall be entitled to terminate the contract or cease trading with the Customer.
- b. If either party is in breach of the conditions then the other party shall request in writing that the defaulting party remedy the breach. Either party shall have 14 days to remedy the breach.
- c. Either party may terminate the contract for convenience giving 90 days' notice to the other.

20. GENERAL

- a. The headings in these Terms and Conditions are for ease of reference only and shall not affect its interpretation or construction.
- b. In the event of any or part of these terms and conditions being judged illegal or unenforceable for any reason, the continuation in full force and effect of the remainder of them shall not be prejudiced.
- c. Neither party shall be liable to the other for any delay or failure to perform its obligations hereunder where such delay or failure results from circumstances due to any event beyond the reasonable control of either party including but not limited to any of the following: Act of God, extreme adverse weather conditions, flood, fire, lightening, industrial action or lockouts, act or omission of government, war, military operation, riot, terrorist incident.
- d. Any indulgence by the Company to the Customer or any waiver by the company of its rights either under the conditions or otherwise in respect of a transaction or series of transactions shall not be deemed to be a waiver of the Company's rights in respect of any further transactions nor to be an agreement to confer the same indulgence in respect of any subsequent transactions.
- e. These terms and conditions shall be governed and construed in accordance with English Law.
- f. Any notice under this contract shall be effective if sent by first class post to the registered office of the Customer or Company effective on the second day after posting or by fax or email to the last known fax or email address of the Company or Customer effective 24 hours after despatch.
- g. The Customer acknowledges the fact that it has had the opportunity to read these Conditions prior to ordering from the Company and in proceeding warrants its belief that the Contract is reasonable in all of its terms.