



NDL Software Limited, trading as “NDL”,

Terms and Conditions of Business

Definitions

“**Agreement**” means the contract of supply between Supplier and customer relating to the Products and includes these terms and conditions and any other terms of the Supplier’s Quotation to the customer in acceptance of which the customer’s related Purchase Order is placed.

“**Intellectual Property Rights**” includes all copyrights, patents, trademarks, service marks, design rights (whether registered or not), trade secrets, and all other similar proprietary rights and the Intellectual Property Rights of all Products- supplied under these terms and conditions remain with the Supplier.

“**Licence**” means an annual subscription licence issued under the terms and conditions given in part 2 of this Agreement.

“**Purchase Order**” means the customer’s Purchase Order document that specifies the Products to be delivered and which refers to a valid Quotation.

“**Products**” means the Software and Services deliverable to customer as specified in the Purchase Order.

“**Quotation**” means the written quotation or proposal issued by the Supplier in acceptance of which the customer raises their Purchase Order. Unless otherwise specified any Quotations issued by Supplier are only valid for acceptance for a period of 30 days from the date of issue of that Quotation. Save in the case of acceptance of a valid Quotation no contract will arise between Supplier and customer.

“**Services**” means any service contracted by the customer for the Supplier to perform as specified in the Quotation or in the Subscription Licence Schedule.

“**Software**” means the computer programs and accompanying documentation supplied by Supplier to the customer under this Agreement.

“**Subscription Licence Schedule**” means the document supplied to the customer which lists the Software covered by this Agreement and other contractual information relevant to this Agreement including any limitations or variations to the support Services to be provided to the customer under this Agreement. The Subscription Licence Schedule forms part of this Agreement.

“**Supplier**” NDL Software Limited (registered in England, company number 1579602) (NDL) of Parkhill Business Centre, Walton Road, Wetherby, West Yorkshire, LS22 5DZ.

Unless the context requires otherwise, references to the singular include the plural and vice versa, references to any gender include each other gender, references to persons include individuals, bodies corporate, unincorporated associations, partnerships and other legal entities, and references to clauses are to provisions of these conditions.

Part 1

1. The Agreement

- 1.1. The customer agrees to buy and Supplier agrees to sell the Products in consideration of the payment by customer of the price and other sums specified in the Quotation, subject to the terms and conditions in this Agreement relevant to the Products purchased.
- 1.2. Where customer is not buying as end-user the customer undertakes to ensure that the end-user is aware of and accepts the terms and conditions of this Agreement, without which acceptance by the end-user the Products cannot be supplied or licensed to them.

2. Payment

- 2.1. Charges as specified in the Quotation are exclusive of Value Added Tax. The customer shall pay the Value Added Tax on the Charges at the rate and in the manner prescribed by law, from time to time. Payment shall be made within thirty (30) days of receipt by the Customer of a valid invoice from the Supplier.

- 2.2. Interest will accrue in respect of any sum outstanding to Supplier on a daily basis, both before and after any judgement, at the rate of 3% per annum above the base rate from time to time of Lloyds TSB Bank plc, and will be payable by the customer on demand.

- 2.3. Any sums paid by customer to Supplier and not expressly allocated by customer to any payment due from customer may be allocated by Supplier as it sees fit.

3. Further Terms and Conditions

- 3.1. Any Software Product supplied under the Agreement is supplied to the customer subject to the terms and conditions of the Supplier’s Software Licence which are given in Part 2 of this Agreement.
- 3.2. Any support Services provided to the customer under this Agreement are governed by the additional terms and conditions given in Part 3 of this Agreement.

4. Termination

- 4.1. In the event that the customer goes into liquidation, or becomes unable to pay its debts when they become due or has a receiver or administrative receiver appointed over any of its assets, or the customer is in breach of any of its obligations under this Agreement or there is any breach by customer or any of its associated companies of any other agreement between any of them and Supplier or any of its associated companies (including but not limited to obligations to make payments to Supplier), Supplier may by notice to customer with immediate effect (or with effect from such later date as may be specified in such notice):-
 - 4.1.1 terminate this Agreement in whole or in part by treating itself as discharged from further performance of any or all of its obligations under this Agreement and/or
 - 4.1.2 cancel any credit agreed under this Agreement and require payment in full in respect of all the Products already delivered or to be delivered (as the case may be) and so that any sums so payable by customer to Supplier shall be paid forthwith on demand and/or
 - 4.1.3 bring to an end the term of any Licence granted to the customer under this Agreement, and any sub-licence at the option of the Supplier will immediately convert to being a direct Licence between NDL and the sub-licencee.

5. Patent and Copyright Indemnity

- 5.1. Supplier agrees to indemnify customer against legal and other professional expenses it may reasonably incur in defending any proceedings brought against it in respect of a claim that the Products infringe any United Kingdom patent or any right of copyright under English law, and agrees that it will pay any costs and damages which are awarded in or agreed in settlement of such proceedings. In each case subject to and conditional upon compliance by customer with the following conditions:-
 - 5.1.1. Customer will promptly provide Supplier with full details of any such claim or threatened claim of which it is aware and of the commencement of any such proceedings
 - 5.1.2. Customer will only admit to or appeal against any such claim and any adjudication relating to it as Supplier shall direct, and
 - 5.1.3. Supplier shall have no liability under this Clause 5 in respect of the settlement of any claim unless the terms of that settlement shall have been previously approved in writing by Supplier.
- 5.2. In the event that any item of Product becomes or is reasonably expected by Supplier to become the subject of a claim for infringement of any such patent or copyright as mentioned in Clause 5.1, the Supplier shall at its option:-
 - 5.2.1. procure the right for customer to continue using the relevant item, or

5.2.2. replace or modify the relevant item to make it non-infringing, so long as any replacement or modification shall be compatible with and in all material respects equivalent or superior to the original item,

5.3. This Clause 5 sets out Supplier's entire liability under this Agreement, or otherwise, in respect of the claims and proceedings to which it refers.

6. Warranty

6.1. Supplier warrants that:-

- 6.1.1 during the warranty period, the Software shall perform substantially in accordance with the functions described in the Quotation when operated properly in the manner specified in the documentation; and
- 6.1.2 during the term of this Agreement the Services shall be performed with reasonable skill, care and diligence by appropriately experienced, qualified and trained personnel.

6.2. The customer acknowledges that it has assessed for itself the suitability of the Products and the Services for its requirements. The Supplier does not warrant that the Products or the Services will be suitable for such requirements nor that any use of the Products will be uninterrupted or error free. The customer accepts responsibility for the selection of the Products to achieve its intended results.

6.3. The customer's sole remedy for breach of the warranties in Clause 6.1 is as appropriate:

- 6.3.1 to require Supplier to repair or replace (at Supplier's option) the defective item within a reasonable time at no charge to the customer provided that any such breach is notified to the Supplier during the warranty period; or
- 6.3.2 to require Supplier to re-perform the relevant Service or support Service within a reasonable time at no charge to the customer provided that any such breach is notified to the Supplier promptly.

The customer shall provide all information as may be reasonably necessary to assist the Supplier in resolving the defective item or service including, without limitation, sufficient information to enable the Supplier to re-create the defect and shall use all reasonable endeavours to mitigate any and all loss or damage accruing to it as a result of such breach of warranty.

6.4. The warranty in Clause 6.1.1 shall not apply if:-

- 6.4.1 the customer makes or causes to be made any modifications to the Software without the Supplier's prior written consent;
- 6.4.2 the Software is used in an application for which it was not intended or in combination with any other software not approved by the Supplier; or
- 6.4.3 the Software is used other than as permitted under this Agreement.

6.5. The express terms of this Agreement are in lieu of all warranties, conditions, undertakings, terms and obligations implied by statute, common law, trade usage, course of dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by law.

6.6. Supplier shall be entitled to charge customer at its standard rates applicable at the time for any costs incurred or work done pursuant to a claim under Clause 6 which is not a valid warranty claim.

7. Liability & Insurance

- 7.1. Nothing in this Agreement shall exclude or limit the liability of either party for death or personal injury caused by the negligence of that party, its officers, employees, agents or contractors.
- 7.2. Nothing in this Agreement shall exclude or limit the liability of the customer for any loss or damage suffered by the Supplier due to any infringement by the customer of the Intellectual Property Rights of the Supplier or its licensors.
- 7.3. Without prejudice to Clauses 7.1 and 7.2, the liability of either party arising out of or in connection with this Agreement, whether in contract, tort or otherwise, shall in no circumstances exceed a total aggregate amount equal to 100% of the charges payable to the Supplier pursuant to this Agreement in the 12 months prior to the date the cause of action arose.
- 7.4. Without prejudice to Clauses 8.1 and 8.2, neither party shall in any circumstances be liable to the other party for loss of profits, data, goodwill, revenue or anticipated savings or any type of indirect or consequential loss, even if such loss was reasonably foreseeable or that party had been advised of the possibility of the other party incurring the same.

7.5. The Supplier shall during the term of this Agreement maintain the following policies of insurance (the "Insurances"):

Employers' Liability -	£10,000,000 any one occurrence
Public Liability -	£5,000,000 any one occurrence
Product Liability -	£5,000,000 in the aggregate of any one period of insurance
Professional Indemnity -	£2,000,000 any one claim

8. Force Majeure

8.1. The Supplier or its designated representatives shall not be liable to the customer for any delay or failure by Supplier to perform its obligations under this Agreement or otherwise if such delay or failure arises from any unforeseeable cause or causes beyond the reasonable control of Supplier, including, but not limited to, labour disputes, strikes, other labour or industrial disturbance, acts of God, floods, lightning, shortages of materials, rationing, utility or communications failures, earthquakes, war, acts of terrorism, riots, insurrections, embargoes, blockades, actions, restrictions or orders of any government, agency or subdivision thereof.

9. Remedies of Customer

- 9.1. The rights and remedies of the customer set out in this Agreement are exclusive of any other rights and remedies under statute, in contract, tort, or otherwise, at law or in equity, in relation to any matter to which this Agreement relates, save as set out below and as specified in the Quotation.
- 9.2. Supplier does not seek to exclude or limit any liability it may have to customer for death or personal injury caused by negligence or in respect of Section 12 of the Sale of Goods Act 1979.
- 9.3. Supplier's liability to customer for any damage to physical property caused by negligence shall be limited to £5,000,000 for any one act or omission or series of connected acts or omissions.
- 9.4. Any liability Supplier may have to pay any damages or other sums to customer, either for breach of its obligations under Clause 5 or (notwithstanding and without prejudice to the provisions of this Agreement) in contract or tort or any other way, other than damages coming within Clauses 9.2 and 9.3, shall be limited to amounts which in aggregate do not exceed the sum paid by the customer to the Supplier for the Product in the 12 months prior to the claim, and shall not extend to damages or other sums in respect of claims for anticipated profits or revenues or loss of business or goodwill or claims by third parties or other consequential or indirect losses, however caused.
- 9.5. If the Supplier has failed substantially to remedy any breach of its obligations under Clause 5 within 30 days following written notice from customer to Supplier specifying the breach, referring to this Clause 9.5 and given within 30 days of the occurrence of the breach, the customer will have the right to terminate the contract, by giving written notice to that effect to the Supplier and termination of the contract will also terminate any related Software Licence on the same date.
- 9.6. Customer shall procure that no employee, licensee or customer of customer makes any claim against Supplier in respect of any matter to which this Agreement relates save to the extent that Supplier has a liability or obligation in respect of that matter under the terms of this Agreement.

10. General

- 10.1. Supplier shall not be liable to customer and shall not be or be deemed to be in default by reason solely of any delay or failure in its performances under this Agreement resulting from causes beyond its reasonable control (including without limitation employee disputes, failure of contractors and supplies, transportation difficulties and government action) provided that Supplier has used all reasonable efforts to mitigate their consequences, on the basis that in the case of a scarcity of resources Supplier may allocate its resources between third parties to whom it has obligations in such manner as it may in good faith determine. Any time period for any performance by Supplier shall be increased by the period of such delay or failure affecting that performance.
- 10.2. Supplier retains the right to withdraw without compensation any Services sold under this Agreement and not used by the customer within 12 months from the date of invoice unless the delay in making use of those Services is the fault of Supplier

- 10.3. If any term of these conditions is illegal or unenforceable for any purpose then the other provisions shall remain in full force and effect, and the Agreement shall be read and construed for such purpose as if such term had not been included. Supplier and the customer shall agree in good faith a replacement provision as closely equivalent as possible, which is legal and enforceable.
- 10.4. Each of Supplier's rights under this Agreement is additional to any other rights it may have under this Agreement or by statute, common law or otherwise. An effective waiver by Supplier of any of its rights under this Agreement shall not constitute waiver of any other right. To be effective, a waiver must be in writing specifying the right so waived and signed by a director of Supplier. In particular, delay by Supplier in enforcing any of its rights shall not constitute a waiver of that or any other right or of any other breach of that right, nor otherwise prevent Supplier from enforcing them, and exercise of any right shall not prevent exercise of any other right in respect of the same or any other matter.
- 10.5. Supplier shall be entitled to assign all or any of its rights and/or obligations under this Agreement, and references to Supplier shall be deemed to include its successors and assigns.
- 10.6. The headings to this Agreement are for convenience only and shall not be taken into account in construing it.
- 10.7. All notices to be given under this Agreement shall be in writing and shall be duly served when delivered personally or sent by fax or first class recorded delivery post to the other party at its address specified on the Purchase Order or at such other address as it may have notified for the purpose to the other party. Notices to Supplier shall be marked "Attention Company Secretary". Notices so addressed, marked and sent shall be deemed to have been received, if delivered personally or sent by first class post on the next working day following the date of receipt, or, if sent by fax, following the day on which they are despatched with correct answer back appearing at the end of the communication.
- 10.8. This Agreement represents the entire agreement of the parties concerning the subject matter and (without limitation) shall prevail over any terms and conditions contained or referred to in the customer's Purchase Order or in correspondence between customer and Supplier or in Supplier's published literature. All prior agreements and commitments and all other warranties and obligations (whether statutory or in contract or tort or of any other kind and whether express or implied) relating to the subject matter of the Purchase Order are hereby superseded and cancelled. No person has authority to agree to give any variation or addition on behalf of Supplier in relation to this Agreement unless he or she is a Director of Supplier.
- 10.9. This Agreement shall be governed by and construed in accordance with the laws of England and the parties hereby irrevocably submit to the exclusive jurisdiction of the English courts in respect of any matter or dispute arising in connection herewith.

Part 2

NDL Licence Terms & Conditions

NDL Software is licensed, supported and maintained in accordance with the provisions of this Part 2 of this Agreement.

11. Licence and Fees

- 11.1. Software supplied under this Agreement is supplied to the customer on an annual subscription basis, referred to as the Licence for which the customer must pay an initial Licence fee, followed by subsequent annual Licence fees.
- 11.2. The Software Licence commences on the date of invoice from the Supplier
- 11.3. The Software may only be used by the customer during a period covered by a valid initial or annual Licence fee payment made in advance and then only in accordance with the terms and conditions in this Agreement.
- 11.4. Initial and annual Licence fees cover the provision of the Software as listed in the Subscription Licence Schedule, a sample of which is included in Part 5 below, and the Licence includes Software upgrades, maintenance and support as defined in this Agreement.

12. Definitions

- 12.1. Unless the context otherwise requires:

"Copy" means any direct or indirect copy or reproduction of, or of any part of, the Software in any man- or machine-readable form whatever, which is produced by or for the customer (and so that any direct or indirect copy or reproduction of any, or of any part of any Copy shall also constitute a Copy for the purposes of this Agreement).

"Equipment" means the equipment on which the Software is being used as specified by the customer which conforms to our requirements.

13. Object Code Licence

Supplier hereby grants to the customer a non-exclusive and non-assignable Licence to use the Software in the course of its business on the Equipment subject to the terms of this Agreement.

14. Software

- 14.1. The customer shall have the right to make up to two Copies of the Software to be used for safe keeping and back-up purposes. Such Copies shall show the name and version number of, and shall retain any proprietary notices contained in, the Software, and title to such Copies shall vest automatically in Supplier when the same come into existence. The provisions of this Agreement shall apply to such Copies as they apply to the Software.
- 14.2. The customer shall have no right to make any modification or alteration to the Software and shall do nothing in respect of the Software which is not expressly permitted in this Agreement except with the Supplier's prior written consent.
- 14.3. None of the customer's rights under this Agreement (including in particular the Licence) may be assigned, mortgaged, charged, exercised by others or otherwise disposed of and the customer is not entitled to grant any sub-licence or consent to any third party to exercise any of these rights without prior written agreement from the Supplier.

15. Protection and Security

- 15.1. The customer acknowledges that all copyright, patent and other Intellectual Property Rights in respect of the Software, the Documentation and all Copies, remain the sole and exclusive property of the Supplier as between the customer and the Supplier subject only to the Licence.
- 15.2. The customer agrees that without prejudice to the requirements of the Freedom of Information Act, 2000 and in particular without prejudice to sections 41 and 43 of the Act, the Customer and the Manufacturer accept that any information of a confidential nature supplied by either party in connection with this contract shall not be disclosed to a third party without the consent of the other party except to such extent as may be necessary, on a need-to-know basis, in connection with this Agreement, and that the customer will keep, and will ensure that its relevant employees and contractors keep, the Software, and all Copies, together with all information they contain, strictly confidential and in its possession and:-
- 15.2.1 will take all reasonable precautions to ensure that no unauthorised person may remove the Software or a Copy from the site on which it is in use;
- 15.2.2 will not use any of them for any purpose save as authorised by this Agreement;
- 15.2.3 will not disclose any of them to anyone, save only that Customer may disclose them to those of its employees and contractors as need to receive them for the purposes of exercising any of the rights granted to the customer in this Agreement;
- 15.2.4 will notify those of its employees and contractors referred to in Clause 15.2.3 of the provisions of this Clause 15 and ensure that they comply with its terms and will inform the Supplier as soon as reasonably practicable after it becomes aware of any breach of those terms or other use of the Software or any Copy not authorised by the Supplier;
- 15.2.5 will not remove, obscure or omit any proprietary or similar notices or statements included on the Software.
- 15.3. The customer agrees to notify the Supplier in writing on request with details and evidence of the location of the Software and all Copies.
- 15.4. The customer agrees to keep the Supplier indemnified against all costs, expenses, losses, claims and demands whatsoever directly suffered or incurred by it in connection with any breach by the customer of its obligations in respect of the Software. In particular, (but without limitation) in the event that a third party makes any unauthorised use of any Software or any Copy and such use results from any such breach then (without prejudice to any other rights or remedies the Supplier may have), the customer will pay the Supplier on demand an amount equal to the fees which would have been payable if the Supplier had licensed such Software or Copy to that third party at the start of the unauthorized use on

Supplier's standard terms and at its standard rates applicable at the time. The Supplier's certificate as to such amount shall be conclusive and binding in the absence of fraud.

15.5. The obligations of the customer under this Clause 15 shall remain in force notwithstanding termination of the Agreement or the Licence, however arising.

15.6. The Licence shall terminate forthwith in the event of any breach by the customer of any of its material obligations under this Agreement. Such termination to be without prejudice to any other rights the Supplier may have in respect of such breach.

Part 3

Licence Support Terms & Conditions

16. Eligibility for Support Services

To be eligible for support Services under this Agreement, the customer must have a valid Subscription Licence covering the relevant Software.

16.1. The Software must be installed by the Supplier, its designated representative, or by the customer according to instructions for installation provided by the Supplier.

16.2. The Software must be unmodified, properly maintained and operated according to the Supplier's instructions prior to commencement and for the duration of this Agreement.

17. Service responsibilities of NDL Software Limited

Any variation or limitation to the Services hereunder provided must be specified on the Subscription Licence Schedule.

17.1. The Supplier will provide technical support by telephone, email and fax.

17.2. The customer is required to provide the Supplier with the name of a nominated technical contact together with his/her telephone and email details.

17.3. For awi product customers the customer is required to provide remote access into the awi system for diagnostic purposes. Such remote access to be of a standard suitable to enable Supplier's support staff to work without unreasonable delay.

17.4. This support does not cover general maintenance to the system environment; the customer will remain responsible for the server platform on which any of the Software runs, including the provision of anti-virus software and implementation of backup and restore procedures etc.

17.5. The customer is responsible for the provision and maintenance of any Virtual Machine (vm) licence requirements and also for any provision, maintenance and licensing of any required third-party application client licences.

17.6. The Supplier will endeavour to provide the customer with product updates as and when they become available and typically one major (full version) product release every 18 months.

17.7. The Supplier cannot guarantee any levels of system performance due to the potential dependence of the Software on the performance of any relevant back-office third-party applications or general system environments.

17.8. awi product customers will be eligible to entry to the awi User Group and agree to being listed on the closed NDL User Group Web site and directory.

18. Software Support Service

Telephone support for assistance with technical questions related to the Software. Operation of telephone support service is from 9.00am to 5.30pm, on business days, which are Monday to Friday, UK time, exclusive of public holidays. At other times a Fax machine or E-mail service is provided to receive requests. Such requests will be handled by the Supplier's personnel at the start of the next business day. Telephone support entitles the customer to the Supplier's reasonable efforts to diagnose and correct reproducible problems.

19. Documentation Updates and Upgrades

Periodic documentation updates may be made available for the Software supported under this Agreement.

20. Service Logs

20.1. The Supplier will maintain service logs of the Software covered by this Agreement. Such logs remain the property of the Supplier.

20.2. The Supplier will make copies of these logs available to the customer if requested.

21. Responsibilities of the customer

As a condition to receiving support under this Agreement

21.1. The customer must maintain a current backup copy of all Software and customer data to prevent inadvertent data loss during service.

21.2. The customer will have all Supplier's release and update materials available to the person who calls the Supplier on behalf of the customer for support and will make these materials available to Supplier's service personnel if requested.

21.3. The customer will perform system tests upon request of Supplier's service personnel.

21.4. The customer will provide written descriptions of problems at Supplier's request.

21.5. The customer will provide copies on magnetic disk or paper listing of memory dumps, traces etc. if requested by Supplier. Such disk or paper copies will be returned upon customer's request.

22. Service limitations

22.1. Not covered by this Agreement are problems and questions arising from:-

22.1.1. Modification to the Software by anyone other than Supplier.

22.1.2. Operation or use outside the specification in Supplier's documentation.

22.2. On-site Services and any other Services, except as provided by the fax machine used to record out of hours calls, outside Supplier's business hours noted in the next paragraph are not provided by the Agreement.

22.3. Unless expressly stated in the Agreement, support for the current version of each Software product listed in the Subscription Licence Schedule will be provided by the Supplier for one (1) year following the release of a subsequent version.

23. Limitation of liability

23.1. Supplier warrants that it will perform its Services with reasonable care and skill but Supplier shall have no liability for breach of warranty where such breach arises as a result of a customer failing to comply with any of the conditions referred to in Clause 16 above.

23.2. Supplier's liability to customer for any damage to physical property caused by negligence shall be limited to £5,000,000 for any one act or omission or series of connected acts or omissions.

23.3. Any liability Supplier may have to pay any damages or other sums to customer, either for breach of its obligations under Clause 17 or (notwithstanding and without prejudice to the provisions of this Agreement) in contract or tort or any other way, other than damages coming within Clauses 23.1 and 23.2, shall be limited to amounts which in aggregate do not exceed the sum paid by the customer to the Supplier for the Services specified in this Agreement and shall not extend to damages or other sums in respect of claims for anticipated profits or revenues or loss of business or goodwill or claims by third parties or other consequential or indirect losses, however caused.

Part 4

The following is an example of the Subscription Licence Schedule document supplied to the customer as part of this Agreement.

DRAFT Subscription Licence



XXXXXX
XXXXXXXX
XXXXXXXX
XXXXXX
XXXXXX
XXXXXX

NDL Software Limited
4 Deighton Close, Wetherby
West Yorkshire LS22 7GZ
T: 01937 543500
Company Number: 1579602

Contract Number	XXXXX
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NDL Contact	Customer Contact	Start Date	End Date
XXXXXXXXXX	XXXXXXXXXXXX	DD/MM/YYYY	DD/MM/YYYY
This Contract is for the period stated above and is issued in line with the terms and conditions of sale.			

Products
1 x XXXXXXXXXXXX Serial Number: XXXXXXXXXXXXXXXX