



SHI International Corp. T/A SHI UK Terms and Conditions of Sale

- (A) SHI is in the business of, and has expertise in, providing Products and Services as hereinafter described;
- (B) Customer wishes to obtain through SHI and SHI wishes to provide to Customer such Products and Services;
- (C) in consideration of the mutual covenants and promises set forth herein, it is agreed as follows:

1. INTERPRETATION

1.1 Definitions.

Affiliate: means any entity which controls, is controlled by or is under common control with one of the Parties to this Agreement. "Control" or "Controlled" means beneficial ownership (direct or indirect) of the subject entity.

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Conditions: the terms and conditions set out in this document [as amended from time to time in accordance with clause 11.4].

Contract: the contract between SHI and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

Customer: the person or firm who purchases the Goods from SHI.

Deliverables: means those reports, documentation, and schedules to be developed and provided by SHI to Customer in regard to the Services provided by SHI hereunder.

Force Majeure Event: an event or circumstance beyond a party's reasonable control.

Goods: the goods (or any part of them) set out in the Order.

OEM: means the original equipment manufacturer, or in the case of software, the software publisher/licensor

Order: means the form of purchase order or other document used for the purpose of ordering Product and/or Deliverables pursuant to these terms. Order shall also include a phone order placed by Customer employee to SHI utilising Customer's corporate procurement card or Customer's written or electronic form of purchase requisition.



Specification: any specification for the Goods, including any related plans and drawings that is agreed by the Customer and SHI.

Services: means the resale services provided by SHI under these terms; i.e. sourcing and fulfilling the Product and/or providing Deliverables identified in an Order.

1.2 Interpretation:

- (a) a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (b) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (c) a reference to **writing** or **written** includes emails.

2. BASIS OF CONTRACT

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when SHI issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.5 Any samples, drawings, descriptive matter or advertising produced by SHI and any descriptions or illustrations contained in the SHI's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.



- 2.6 A quotation for the Goods given by SHI shall not constitute an offer. A quotation shall only be valid for a period of 30 Business Days from its date of issue.
- 2.7 Any Order issued hereunder shall, at a minimum, contain the following:
- (a) the incorporation by reference of this terms;
 - (b) the location where Product will be delivered;
 - (c) a detailed description of the Product, including, but not limited to, SKU, manufacturer's part number, and any applicable designation and/or specifications which will avoid confusion regarding the Product to be delivered;
 - (d) a detailed description of Deliverable(s) to be provided by SHI;
 - (e) price, including any applicable fees, and payment terms;
 - (f) the scheduled delivery date;
 - (g) SHI shall not be required to deliver any Product and/or Deliverable unless and until an Order has been provided to SHI.
- 2.8 If notice of rejection of an Order is not received by Customer within two business days from the date of its receipt by SHI, then such Order shall be deemed to have been accepted by SHI.
- 2.9 Third party IT services resold under an Order are provided by third parties, and Customer acknowledges that SHI shall have no liability to Customer for such third party IT services beyond the processing of invoices and payment therefor.

3. GOODS

- 3.1 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify SHI against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by SHI in connection with any claim made against SHI for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with SHI's use of the Specification. This clause 3.1 shall survive termination of the Contract.
- 3.2 SHI reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.



- 3.3 Unless otherwise specifically agreed to in an Order, any and all Deliverables created, developed, or prepared by SHI, its employees or Subcontractors shall be deemed a "work for hire" for the sole benefit of and belonging exclusively to Customer. All other intellectual property rights and other proprietary rights in and to the Services, and information, know-how and processes developed by SHI, or anyone acting on SHI's behalf, arising from the Services performed hereunder shall be the sole and exclusive property of SHI and shall not be claimed to be owned by Customer or their employees.
- 3.4 To the extent any Deliverable is not deemed a "work for hire" by operation of law, SHI hereby irrevocably assigns, transfers and conveys to Customer all of its right, title and interest in all Deliverables under the Order, including, but not limited to, all rights of patent, copyright, trade secret or other proprietary rights in such Deliverable.
- 3.5 SHI shall provide to Customer all Commercially Reasonable assistance, execute such documents, and take all such other actions, which may be reasonably required to perfect the foregoing rights to the Deliverable (including, but not limited to, directing its employees to execute all applications for patents and/or copyrights, assignments, and other papers necessary to secure and enforce Customer's rights to such Deliverable).
- 3.6 Notwithstanding the foregoing, SHI shall retain ownership rights to (1) all of its previously existing intellectual property, including any systems, derivatives, modifications and enhancements thereto, (2) Confidential Information of SHI, and (3) any tools or scripting applications used, developed or created by SHI or its third party licensors during the performance of these terms.

4. TITLE, RISK OF LOSS, RETURNS

- 4.1 SHI shall transfer to Customer good and merchantable title to the Deliverables and Product, free from all liens, encumbrances and claims of others, upon delivery of the Deliverables and Product to and its receipt by Customer, at which time title and risk of loss shall vest fully in Customer, unless notice of rejection is provided to SHI's authorised representative within twenty four hours after such delivery.

(A) Returns

1. General

Subject to Sections 2, 3, 4, 5, and 6, below,

- (a) For a Product to be eligible for return it must be: (1) in Resale Condition (one hundred percent complete, including all original boxes, packing



materials, manuals, blank warranty cards, and other accessories provided by the OEM), (2) within the OEM's or distributor's allowable time period for return after Customer's receipt of the Product, and (3) not designated as "non-cancellable" or "non-returnable" ("Special Order") when quoted by SHI to Customer.

- (b) If the Product is a Special Order item or not in Resale Condition, then SHI will accept the return only if the OEM/distributor will accept the return.
- (c) Shipping and any restocking fees imposed by the OEM or distributor shall be at Customer's cost.
- (d) If return is due to SHI's error, and the return request is made by Customer within thirty days of receipt of Product, then SHI will accept the return at no additional cost to Customer.
- (e) If Customer ordered the incorrect Product or has decided that it no longer wants the Product, then SHI will accept the return from Customer, provided the OEM/distributor will accept the return.

2. Non-Conforming Product

- (a) If Customer determines, in its reasonable discretion, that any Product is not in conformance with the description in the Order (a "Non-Conforming Product"), then Customer may at its option, either:
 - (i) Request that SHI promptly initiate an order to replace the Non-Conforming Product at no cost to Customer, in which case SHI will order a replacement unit within one business day of notice of non-conformance from Customer and Customer shall return the Product to SHI, all at no cost to Customer; or
 - (ii) Terminate the non-conforming portion of the applicable Order, in which case Customer shall return the Product to SHI at no cost to Customer, and SHI, upon receipt of the Product, shall promptly refund to Customer any payments made to SHI therefor,
 - (iii) provided that the request for such return was made within OEM's or distributor's allowable time period for return after receipt of Product by Customer, and that the return will be made in accordance with SHI's RMA process, described below.

3. Software License Returns

- (a) The OEM's return policy or the applicable license agreement, as the case may be, will govern returns for licensed software.

4. Damage, Defects and DOA



- (b) If the Product has concealed damage (i.e., there is no evident damage to external packaging), is defective, or dead on arrival (“DOA”), SHI will accept the return from Customer, provided the OEM or distributor will accept the return from SHI. In any event, the OEM’s or distributor’s policies, as applicable, (which may include processing as a warranty claim) will apply. SHI will order a replacement unit within one business day of notice of damage, defect or DOA from Customer for prompt delivery to Customer, all at no cost to Customer.

5. Shipping Damage

- (a) If a package containing Product purchased from SHI arrives at Customer Order’s ship-to address with external damage, Customer should refuse to accept delivery from the carrier. If Customer does accept delivery of such a package, Customer must:
 - (i) note the damage on the carrier’s delivery record so that SHI may file a claim;
 - (ii) save, as is, the Product and the original box and packaging it arrived in; and
 - (iii) notify SHI in writing within five days of delivery acceptance to arrange for carrier’s inspection and pickup of the damaged merchandise.
- (b) If Customer does not comply with the above requirements, Customer will be deemed to have accepted the Product as if it had arrived undamaged, and SHI’s regular return policy, as described herein, and all OEM warranties and restrictions will apply.

6. RMA Process

In order for SHI to accept any returns, Customer must first obtain from SHI and apply an RMA (a Returned Merchandise Authorization) (“RMA”) number to the returned Product. If a Product is shipped directly to the OEM, distributor, or SHI without an RMA number, then SHI shall not be responsible for accepting such return, Product replacement or refund, and such return may void any Customer claims on the Product through SHI.

5. SHIPPING AND PACKAGING

- 5.1 Products shipped to the Customer’s premises shall be packaged in such a manner as to preclude all reasonably anticipated in-transit damage and in accordance with commercial standards.



5.2 All shipments of Products shall be clearly labelled with the shipping address stated on the Order, the applicable Order number, recipients name and if applicable the building name and room number.

5.3 Shipping terms are FCA (Free Carrier Destination) in accordance with INCOTERMS 2000.

6. PRICE AND PAYMENT

6.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in SHI's published price list in force as at the date of delivery.

6.2 All invoices shall be submitted to the remit-to address specified in an Order.

6.3 Subject to reconciliation with these terms and the Order, including verification that the Product was delivered, the invoice shall be paid net thirty (30) days after receipt of a valid invoice at the above referenced remit-to address.

6.4 Any invoice or portion thereof that is subject to a good faith dispute will not be paid; in such case, Customer will promptly notify SHI of any rejected invoice or portion thereof, with reasons for such rejection. The rejected costs, adjusted to the extent as mutually agreed to, shall then be re-invoiced on a separate invoice and paid net fifteen (15) days thereafter.

6.5 The price specified in the Order for the Product shall consist of cost, plus mark-up percentages. The mark-ups represent SHI's fee ("**Fee**") for performing the Services.

6.6 Customer will pay any sales, use, value added or similar taxes (excluding taxes on SHI's income or gross receipts) imposed or based on the sale of Products under these terms. Such taxes will be separately stated on SHI's invoices and reported and paid to appropriate governmental authorities by SHI. At Customer's request, SHI will file any certificate or other document which may cause any such tax to be avoided or reduced, and cooperate with Customer in contesting any such tax or in claiming, on Customer's behalf, refunds of any such taxes paid by or on behalf of Customer.

6.7 Notwithstanding the foregoing, in cases where payments originate from Customer Affiliates located in Romania, APAC or Latin American countries, and portions of such payments will be subject to with-holding tax ("**WHT**"), SHI shall be permitted to incorporate the value of such withholding tax into the cost of the Product as a direct pass through to the Customer Affiliate, without mark-up.



7. SOFTWARE LICENSES

- 7.1 Software Products resold under these terms, as well as related maintenance or support services, will be governed by either the license/support agreement between Customer and the OEM or, if no such agreement exists, the OEM's standard license/support agreement, which SHI shall forward to Customer at the time of delivery of the Products, when provided to SHI by the manufacturer.
- 7.2 SHI is not a party to any such terms between Customer and manufacturer and Customer agrees to look solely to the OEM for satisfaction of any and all license and support claims or obligations related to that OEM's Product.

8. TERMINATION

- 8.1 Without limiting its other rights or remedies, SHI may terminate this contract with immediate effect by giving written notice to the Customer if:
- (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 20 days of that party being notified in writing to do so;
 - (b) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - (c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (d) the Customer's financial position deteriorates to such an extent that in SHI's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 8.2 Without limiting its other rights or remedies, SHI may suspend provision of the Goods under the Contract or any other contract between the Customer and SHI if the Customer becomes subject to any of the events listed in clause 8.1(a) to clause 8.1(d), or SHI reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.



- 8.3 Without limiting its other rights or remedies, SHI may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment.
- 8.4 On termination of the Contract for any reason the Customer shall immediately pay to SHI all of SHI's outstanding unpaid invoices and interest.
- 8.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.
- 8.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

9. LIMITATION OF LIABILITY

- 9.1 Nothing in these Conditions shall limit or exclude SHI's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
 - (d) any matter in respect of which it would be unlawful for SHI to exclude or restrict liability
- 9.2 Subject to clause 9.1:
- (a) SHI shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - (b) SHI's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the total amount or the fees actually paid or payable by the Customer to SHI for the price of the Goods up to a maximum of a year previous to any claim made.



10. FORCE MAJEURE

- 10.1 Neither Party shall be liable to the other to the extent any failure or delay in performing its obligations hereunder, or for any loss or damage resulting therefrom, is due to: (1) acts of God or public enemy, acts of government, riots, terrorism, fires, floods, strikes, lock outs, epidemics, act or failure to act by the other Party, or unusually severe weather affecting Customer, SHI or its subcontractors, or (2) causes beyond their reasonable control and which are not foreseeable (each a “**Force Majeure Event**”). In the event of any such Force Majeure Event, the date of delivery or performance shall be extended for a period equal to the time lost by reason of the delay.
- 10.2 The Party experiencing the delay shall be prompt in restoring normal conditions, establishing new schedules and resuming operations as soon as the event causing the failure or delay has ceased. SHI shall notify Customer promptly of any such delay and shall specify the effect on the Product delivery as soon as practical.
- 10.3 Notwithstanding any of the foregoing to the contrary, neither Party shall be excused from those obligations not directly affected by a Force Majeure Event, and if the Force Majeure Event is caused by a Party’s failure to comply with any of its obligations under these terms or by such Party’s negligence or omission, there shall be no relief for such Party from any of its obligations under these terms. Notwithstanding anything to the contrary, if the delay or interruption of performance resulting from a Force Majeure Event exceeds thirty days, then the Party receiving the delayed performance may terminate these terms upon ten business days’ notice to the other Party.

11. GENERAL

11.1 Assignment and other dealings.

- (a) SHI may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of SHI.

11.2 Confidentiality.



- (a) Each party undertakes that it shall not at any time, disclose to any person any confidential information concerning the business, affairs, customers, clients or SHIs of the other party or of any member of the group to which the other party belongs, except as permitted by clause 11.2(b). For the purposes of this clause, **group** means, in relation to a party, that party, any subsidiary or holding company from time to time of that party, and any subsidiary from time to time of a holding company of that party.
- (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 11.2; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with these terms.

11.3 **Entire agreement.**

- (a) This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these terms. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these terms.

11.4 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

11.5 **Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

- (a) waive that or any other right or remedy; nor



- (b) prevent or restrict the further exercise of that or any other right or remedy.

11.6 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

11.7 **Notices.**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or email.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.7(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

11.8 **Third party rights.** No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.

11.9 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

11.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.