Terms and Conditions

Incremental Group's standard terms and conditions are detailed below.

1. GENERAL

These Terms and Conditions apply to and govern every supply of systems and services by Incremental Group Limited whose principal office is at 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. 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 during operation.

2.9. Client Data means any data (including any Client Personal Data), documents, text, drawings, diagrams, images or sounds (together with any database made up of any of those), embodied in any medium, that are supplied, or made available, to Incremental Group by or on behalf of the Client, or which Incremental Group is required to generate, process, store or transmit pursuant to this contract.

2.10. Client Personal Data means any personal data Processed by Incremental Group on behalf of the Client pursuant to or in connection with this contract.


2.12. Processing has the meaning set out in the GDPR.

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

4. 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 delivery and insurance charges, out of pocket expenses and VAT. Out of pocket expenses will be recharged at cost unless otherwise stated in the quotation document.

4.2. Invoices shall be issued by Incremental Group to the Client in accordance with the payment schedule defined in the quotation or as otherwise agreed in writing between Incremental Group and the Client. 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. 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.

5.2. 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. SERVICES AND BESPOKE SOFTWARE DEVELOPMENT

6.1. The following provisions apply to the supply of Services and Bespoke Software Development:

6.2. 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.

6.3. 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.

6.4. 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).

6.5. 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.

7. ACCESS
7.1. Access to relevant information, personnel and facilities will be provided by the Client to Incremental Group personnel 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.

8. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

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

8.2. is already in its possession at the date of disclosure, or
8.3. is or comes into the public domain, or
8.4. is independently developed by the receiving party or
8.5. is rightfully obtained from any third party(s) without restriction.

9. 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.

10. CHANGES

11. 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.

12. RISK AND TITLE

12.1. 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.
12.2. 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.
12.3. 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.

13. WARRANTY

Subject to the provisions of this clause:

13.1. 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.

13.2. 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 its 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.

13.3. 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 an error or is necessary for the manufacturer to provide support.

13.4. 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.

13.5. 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.

13.6. 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.

13.7. The Client undertakes on an ongoing basis that it has secured all necessary rights and permissions from data subjects (as defined in Data Protection Laws) to allow Incremental Group to receive and Process the Client Personal Data as contemplated by this contract.
14. 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.

15. TERMINATION

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

15.1. 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

15.2. 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.

15.3. 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.

15.4. 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 that have been delivered. Notwithstanding the foregoing Incremental Group shall use its reasonable endeavours for the Client to obtain from any Third-Party Software vendor or Hardware supplier, agreement to waive or refund charges for products and service ordered for the Client's project and not yet delivered.

15.5. 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.

16. Data Protection

16.1. Both parties agree to comply with their respective obligations under the Data Protection Laws at all times during the duration of this contract.

16.2. The parties agree that the Client is the Controller and Incremental Group is the Processor of the Client Personal Data.

16.3. The Schedule to this [Contract/Agreement] sets out certain information regarding Incremental Group's Processing of the Client Personal Data. The parties may make amendments to the Schedule by written agreement where necessary to meet the
requirements of Data Protection Laws. Nothing in the Schedule (including as amended pursuant to this Clause 12.3) confers any right or imposes any obligation on either party.

Incremental Group shall:

16.4. only carry out processing of Client Personal Data on Client's instructions and in accordance with its obligations under this contract (unless required by law to act without such instructions);

16.5. implement appropriate technical and organisational measures to protect Client Personal Data against unauthorised or unlawful processing and accidental loss or damage;

16.6. ensure that the individuals Processing Client Personal Data are subject to a duty of confidence;

16.7. only engage a sub-processor with the prior consent of the Client and a written contract;

16.8. assist the Client in providing subject access and allowing data subjects to exercise their rights under the Data Protection Laws;

16.9. assist the Client as reasonably required in meeting its obligations under Data Protection Laws in connection with this contract;

16.10. delete and return all Client Personal Data to the Client as requested at the end of the contract;

16.11. maintain complete and accurate records and information to demonstrate its compliance with this clause 16 and allow for audits by the Client or the Client's designated auditor (giving reasonable notice where possible);

16.12. notify the Client if asked to do something in contravention of Data Protection Laws;

16.13. notify the Client without undue delay on becoming aware of a data breach (as defined under Data Protection Laws) in relation to the Client Personal Data; and

16.14. not transfer any Client Personal Data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:

   the Client or Incremental Group has provided appropriate safeguards in relation to the transfer;

   the data subject has enforceable rights and effective legal remedies;

Incremental Group complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any Client Personal Data that is transferred; and

Incremental Group complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Client Personal Data.
17. MISCELLANEOUS

17.1. 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.

17.2. 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.

17.3. 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. 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.

Schedule - Details of Processing Client Personal Data
This Schedule includes certain details of the Processing of Client Personal Data as required by Article 28(3) GDPR.

a. Subject matter and duration of the Processing of Client Personal Data

The subject matter and duration of the Processing of the Client Personal Data are set out in this contract.

The data protection terms of this contract shall take effect on the contract Start Date and shall continue in full force and effect until the expiry or valid termination of the contract.

Incremental Group will Process Client Personal Data in accordance with this contract from the contract Start Date until the expiry or valid termination of the contract.

b. The nature and purpose of the Processing of Client Personal Data

Incremental Group shall carry out the following Processing of Client Personal Data on behalf of the Client in respect of the contract:

» For the purposes of providing support as per this contract, client personal data will be collected and stored in the Incremental Group Service Desk database;

» Stored contact details of CUSTOMER will be used to communicate with said individuals to provide support as per this contract.

c. The types of Client Personal Data to be Processed

Incremental Group Processes the following types of Client Personal Data on behalf of the Client when required to do so in order to provide the support services:

» Employee names;
» Business email addresses;
» Business telephone numbers;
» Postal addresses of business premises;
» IP addresses.

d. The categories of Data Subject to whom Client Personal Data relates
Incremental Group Processes Client Personal Data for the following categories of Data Subjects on behalf of the Client when required to do so in order to provide the support services:

» The client's employees and contractors.

e. The obligations and rights of the Client
The obligations and rights of the Client are set out in the contract.