

Business Systems & ICT

Open Source Specialists

Terms & Conditions of Trading

CONFIDENTIALITY NOTICE

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These Terms and Conditions apply to Application Development Projects and other services provided by OpusVL to the Client.

1 Definitions

- 1.1 In these terms and conditions, the following words have been used to describe the terminology. The definition of this terminology is as follows;
 - 1.1.1 **"Acceptance Date"** is the date on which the new software is accepted (or deemed to be accepted) by the client;
 - 1.1.2 **"Associated Companies"** means any company that is a holding company, a subsidiary company or a subsidiary of any such holding company of either party from time to time and "subsidiary" and "holding company" shall have the meaning set out in Section 736 of the Companies Act 1985 (as amended);
 - 1.1.3 **"Contract"** means the agreement between the Company and the Client for the sale of the Products and/or Services created by the acceptance of a Proposal, Sales Order or Invoice (which shall be governed these terms and conditions);
 - 1.1.4 **"Company"** means Opus Vision Limited T/A OpusVL (registered number 3905104);
 - 1.1.5 **"Completion Date"** means work is complete, no further work is required to meet the obligations of the Project;
 - 1.1.6 **"Client"** means the organisation or singular entity that wishes to engage with the services of The Company for products and/or services, and it's Associated Companies;
 - 1.1.7 **"Function Point"** is a unit of measurement to express the amount of business functionality an information system provides to a user;
 - 1.1.8 **"IPR Schedule"** relates to the Intellectual Property Rights schedule documentation;
 - 1.1.9 **"PID"** is a project initiation document illustrating the higher level scope of the project and is created after discussion with client;
 - 1.1.10 **"Purchase Order"** means a purchase order document created by the Client and provided to the Company, confirming acceptance of the Contract;
 - 1.1.11 **"Products"** means the infrastructure, consultancy, support, applications or software development services provided by the Company to the Client;
 - 1.1.12 **"Project"** means the agreed work set out in the PID;
 - 1.1.13 **"Project Delivery Date"** means the date that the Project has been delivered for the Client for review;
 - 1.1.14 **"Proposal"** is a document supplied to the client for consideration of a solution utilising the services of the Company;
 - 1.1.15 **"Quality Defect"** means an objective defect in quality, for example, spelling error, system crash;
 - 1.1.16 **"Sales Order"** is defined as a confirmation of agreed commercials of products or services which details the sale and costs and may be supported with a Proposal;
 - 1.1.17 **"Services"** means the professional, technical, installation and/or training services provided by the Company to the Client in relation to the Products as detailed in the Sales Order;
 - 1.1.18 **"User Acceptance Testing"** is when the client tests the product through various means in order to evaluate progress and acceptance for a particular stage of work;
 - 1.1.19 **"Written Notification"** is informing the other party through means of email, fax or letter. In case of letter - first class post is expected;
- 1.2 The following terms and conditions shall apply to all Contracts between the Company and the Client relating to the sale of Products and/or supply of Services and shall supersede any other terms and conditions other than those set out or referred to in the Purchase Order or Sales Order unless expressly stated.
- 1.3 These terms and conditions shall be applicable to all repeat orders made by the Client, unless the Company notifies the Client otherwise.

2 General

- 2.1 The headings in these terms and conditions are included for representation only and shall not affect their interpretation.
- 2.2 Failure by the Company at any time to enforce any breach by the Client of the Contract shall not be construed as a waiver by the Company of any terms of the Contract and the Company shall be entitled to enforce the Contract at any time.
- 2.3 If any part or whole provision of these terms and conditions of the Contract become invalid, unenforceable or void, the remainder of the terms and conditions within this contract remain valid and enforceable.
- 2.4 A person who is not a party to the Contract shall have no rights pursuant to the Contracts (Rights of Third Parties) Act 1999 ("the Act") to enforce any of these terms and conditions or the Contract. Any right or remedy of a third party which exists or is available apart from the Act is not affected.
- 2.5 Where the Product(s) are supplied for export from the United Kingdom, the provisions of this clause shall (subject to any special terms agreed in writing between the Client and the Company) apply notwithstanding any other provision in these terms.
- 2.6 The Client shall be responsible for complying with any legislation or regulations governing the importation of the Product(s) into the country of destination and for the payment of any duties.
- 2.7 The Company shall have no liability for any claim in respect of any defect in the Product(s) which is caused or arises after shipment of the Product(s), or in respect of any damage during transit.

3 Acceptance of Sales Orders and Proposals

- 3.1 The Client wishes to purchase Products and/or services as set out in the proposal or sales order and the Company offers these services subject to these terms and conditions.
- 3.2 Unless expressly stated, Sales Orders or Proposals are valid for thirty (30) days and impose no obligation on the Company or Client until accepted.
- 3.3 Once a proposal has been accepted, an invoice will be generated for the Client to make a payment against.
- 3.4 The following actions are deemed acceptance of an Invoice, Proposal or Sales Order:
 - 3.4.1 Written notification from the Client
 - 3.4.2 Receipt of a Purchase Order from the Client
 - 3.4.3 Receipt of payment from the Client
 - 3.4.4 Execution or consumption of services described in a Proposal, Sales Order or Invoice
- 3.5 The Company reserves the right to adjust the price by giving written notice to the Client, where necessary to compensate for exchange of rate fluctuations or material variations in the cost to the Company of raw materials or hardware or where the Client is unable to fulfil their obligations to the Project.

4 The Project

- 4.1 The Company will provide the Client with infrastructure or application development services for the purpose of creating new products or services as detailed in the Proposal or Sales Order.
- 4.2 The Company shall supply to the client the object and/or source code of the new product in accordance with the agreed requirements.
- 4.3 Where the client requires the Company to provide training, support and maintenance in relation to the new product, both parties shall enter into a separate support and maintenance agreement, the terms of which will be agreed between the Company and the Client.

5 The Client's Obligations

The Client shall;

- 5.1 Make available the necessary resources required for the Company to deliver the specified project, including stakeholder and technical staff as and when required.
- 5.2 Promptly furnish the Company with such information and documents that may be required for timely delivery and completion of the project.
- 5.3 Ensure a representative is available as reasonably required by the Company.

- 5.4 Co-operate and engage the Company throughout the period of engagement as necessary to communicate any information on a timely basis.

6 Delivery & Commencement

- 6.1 Any delivery period quoted is an estimate and commences from the date of the acceptance of the order. Time of delivery shall not be of the essence for the purposes of the Contract. The Company will take all reasonable steps to deliver the Products or Services during the times agreed.
- 6.2 If a Client fails to take delivery of Products or services or requests the Company to withhold delivery of the Products for any reason, the Company reserves the right to invoice the Products or services at the original delivery date and to charge the Client for the storage of the Products or other costs incurred at the Client's risk.
- 6.3 Claims for damage to Products in transit must be in writing and must be received by the Company within 7 days of the date of delivery. Claims for non-delivery must be in writing and must be received by the Company within 14 days of proposed delivery date.
- 6.4 The Client shall be responsible for the cost of delivering the Products, which shall be arranged by the Company through a third party carrier.
- 6.5 The Project Delivery Date is deemed to have been reached when the functional requirements of the Project can be demonstrated.
- 6.6 Where there are issues identified including bugs and faults but where the functional requirements are met, the Project Delivery Date is deemed to be met.
- 6.7 Where delivery of goods or services is affected by us by more than one consignment (whether at the request of the purchaser or not) then each such consignment shall be deemed to be a separate contract subject to these Conditions of Sale and the purchaser shall pay to the Client in full the amount payable under the invoice raised for each consignment notwithstanding any rights which the purchaser may claim to have against us in respect of any other contract between us and the buyer.

7 Acceptance tests

- 7.1 The Company shall use its reasonable endeavours to ensure that the Project is ready for User Acceptance Testing by the Acceptance Date.
- 7.2 The Acceptance Tests shall be agreed by the parties and documented in the PID.
- 7.3 The Company shall give the Client 5 working days' prior notice of the date when it will be ready to commence User Acceptance Tests.
- 7.4 User Acceptance testing is carried out where possible on a staging environment which is intended to represent the live environment.
- 7.5 If at any time the Client shall commence live running of the whole or any part of the Project (other than in the User Acceptance Tests) then the date of the commencement of this activity will be deemed as the Completion Date.
- 7.6 If the Project has not been accepted by the Client on or after the occurrence of User Acceptance Testing, where the failure is not due to breach of the Client's obligations under these terms and conditions, the Company will seek to rectify the product until User Acceptance Testing has been achieved in accordance with the PID.
- 7.7 For the avoidance of doubt time shall not be of the essence.

8 Warranty

- 8.1 Projects include warranty for Quality Defects for 4 calendar weeks from the Project Delivery Date or the date of delivery of a Function Point, whichever is the later.
- 8.2 Hardware warranty is provided by the manufacturer.

9 Terms of Payment

- 9.1 Unless otherwise agreed in writing between Company and Client, the Client shall make payment in full in cleared funds within 14 days from the date of invoice. Time for payment shall be of the essence of the purpose of the Contract.
- 9.2 In the event of outstanding invoices payable, the Company shall be entitled, without prejudice to

any other right, to suspend deliveries of Products and/or provision of Services until such payment has been received by the Company in full.

9.3 In relation to any overdue account invoices, the Company reserves the right to charge:

9.3.1 Interest at the rate of 4% above the libor rate, accruing daily from the due date until payment in full has been received by the Company;

9.3.2 An amount equal to any other costs or expenses incurred by the Company in connection with recovery; and/or;

9.3.3 A surcharge of fifty pounds sterling (£50.00) to cover the additional administration costs incurred.

9.4 All charges are, unless otherwise stated, exclusive of any applicable value added or other similar sales tax, and the Client shall be responsible for paying such taxes.

9.5 Unless otherwise agreed in writing between Company and Client, discrepancies or disputes must be raised by the Client within 14 days of the date of invoice.

10 Cancellation

10.1 No order which has been accepted by the Company may be cancelled by the Client except with the prior written consent of the Company. Such consent may be given on the terms that the Client will indemnify the Company in full against all losses, costs, damages and expenses incurred by the Company as a result of such cancellation.

11 Force Majeure

11.1 Neither party shall have any liability under, or be deemed to be in breach of these terms and conditions for any delays or failures in performance of these terms and conditions, which result from circumstances beyond the reasonable control of that party including Acts of God. If such circumstances continue for a period of more than 6 months, either party may terminate these terms and conditions by written notice to the other party.

11.2 If the Company is prevented from performing or delayed in the performance of any Contract (or from performing any warranty given under any Contract) as a result of strike, lockout, trade dispute, act of God, war, riot, explosion, fire, shortage of materials, labour, transport or fuel, or, without limiting the generality of the foregoing, by causes outside the control of the Company, whether affecting its own business or that of any supplier or sub-contractor, the Company shall not be liable for any loss or damage (direct, indirect or consequential) to the Client or any third party.

11.3 If the Company is affected by such circumstances of force majeure then time for performance of its obligations under the Contract shall be extended for a period equivalent to the period of delayed performance.

11.4 If the circumstances of force majeure last for a period longer than sixty (60) days, either party may serve upon the other, one (1) months written notice of termination of the Contract, and unless the sale of the Products and/or provision of the Services has been resumed before the expiry of such notice, the Contract shall terminate in accordance with such notice.

12 Risk, Property and Repossession

12.1 Risk of damage to or loss of the Product(s) shall pass to the Client at the time of delivery (or, if the Client fails to take delivery, at the time when delivery was tendered by the Company).

12.2 The property in the Products shall not pass to the Client and the full legal and beneficial ownership of the Products and Services shall remain with the Company, until the Company has received payment in full and cleared funds for products or services delivered.

12.3 Until such time as the Company has received the full payment under the Contract or any other Contract between the Company and the Client (and/or its Associated Companies, as appropriate) for products and services as described in the sales order or proposal, the Client shall hold the Products solely as bailee for the Company and agrees the following;

12.3.1 The Client will store the Products, where physical products are delivered, on its premises separately from any other Products and in a manner that makes them readily identifiable as the Products of the Company, and will insure the Products for their full price against all risk

as far as is reasonably practical;

12.3.2 The Client's right to possession of the Products shall cease if the rights of the Company to suspend or cancel deliveries become exercisable; and

12.3.3 The Company has the right to repossess the Products and in order to effect such repossession the Company may enter upon the Client's premises or any other premises, through legal arrangement, where the Products are stored or where the Company reasonably believes the Products are stored. The Client will co-operate in the identification of the Company's Products.

12.4 The Company shall be entitled to immediately cancel, terminate and/or suspend any Contract with the Client (and/or any of its Associated Companies) and the Company shall be entitled to the immediate re-delivery of the Products (at the Client's risk and expense) and to re-sell the Products and recover the costs of expenditure where incurred, at any time after the due payment date or before such due date in the case of occurrence of any of the following events:

12.4.1 Appointment of a trustee, receiver, administrative receiver or similar officer in respect of all or any part of the business or assets of the Client or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction);

12.4.2 The bankruptcy of the Client (if an individual or partnership);

12.4.3 The Client being unable to meet its debts in the normal course of business and for the purpose of such recovery and/or resale of the Products, the Company shall be entitled and the Client hereby grants to the Company, its officers, servants or agent a license (which will be binding upon the Client's liquidator, Administrator, receiver or trustee in bankruptcy) (as appropriate) to enter upon the premises of the Client during normal business hours and to remove the Products from the Client's premises;

12.4.4 The Client commits any material or persistent breach of any contract and, where such breach is capable of remedy, fails to remedy the breach within 14 days of receiving written notice from the Company requiring the breach to be remedied; or

12.4.5 The Client (and/or its Associated Companies, as appropriate) ceases or threatens to cease trading in its business.

13 Acceptable Use Policy

13.1 OpusVL have legal and moral responsibilities to ensure an appropriate, sensible and legal Acceptable Use Policy is enforced. Clients who have infrastructure and hosting services with OpusVL may use our servers for lawful purposes only and may not use our servers for the following:

13.1.1 any content that is a breach of applicable local, national or international law or regulation; providing content that is inappropriate, fraudulent, or has any unlawful or fraudulent purpose or effect; or that commits any civil wrong doing or civil harm;

13.1.2 for the purpose of harming or attempting to harm minors of other Users or third parties in any way;

13.1.3 to send, knowingly receive, upload, download, use or re-use any materials which does not comply with this Usage Policy;

13.1.4 to transmit, or procure the sending or, any unsolicited or unauthorised advertising or promotional material or other form of similar solicitation (e.g. spam); or

13.1.5 to knowingly transmit, or link to, any Inappropriate Material via the Website.

13.2 For the purposes of this Acceptable Use Policy, "Inappropriate Material" is material, including views or opinion, that under the laws of any jurisdiction is or does any of the following: unlawful, vulgar, harassing, threatening, stalking, abusive, harmful, racist, obscene, pornographic, malicious, profane, libellous, defamatory, misleading or invasive of privacy or that otherwise violates the legal rights of others; discloses private or personal matters concerning any person; discriminatory in any form; infringes any copyright, trademark or other intellectual property rights of the OpusVL or any third party; constitutes or encourages a criminal offence; purports to be

posted by someone other than the person posting; purports to be validated or authorised by someone or some body or entity when it has not been; or contains a virus, worm, trojan horse or other harmful code or contaminating or destructive features, or any other software or programs that may damage the operation of this site or a third party's hardware or software or which may reasonably be expected to do so.

- 13.3 If you use our servers in any of the circumstances are described in section 13, we reserve the right to suspend the content and services and inform the relevant authorities, or if we are required to act under the legal order provided by the relevant authorities.

14 Limitation of Liability

- 14.1 Nothing in these terms and conditions or the Contract shall limit or restrict the Company's liability for death or personal injury caused as a result of the Company's negligence or for fraudulent misrepresentation.
- 14.2 Save as otherwise specifically provided in these terms and conditions, the Company shall not be liable to the Client for any losses whether arising from breach of contract including, without limitation, negligence), or otherwise and whether flowing naturally and directly from such breach, tort or other cause, or not, for loss of revenue, loss of profit, loss of anticipated savings, loss of goodwill, loss of reputation, loss of anticipated contracts or loss of data provided that each of such exclusions is intended by the parties to be severable.

15 Return of Products

- 15.1 Any Product returns must first be authorised by the Company, who will issue a Returns Authorisation Number. The Company reserves the right to reject Products returned without this number. Carriage charges for returned Products must be pre-paid by the Client. Repaired Products will be delivered at the Company's cost.

16 Notices

- 16.1 Notice periods or any notice required to be given under this contract shall have the following time-scales;
- 16.1.1 Post is deemed to be accepted after 48 hours;
- 16.1.2 Email and fax is deemed to be accepted after 12 hours following successful transmission.
- 16.1.3 Any post delivered by hand is deemed delivered after 3 hours.

17 Data Protection

- 17.1 The Company may use the Client personal data to create or update records held by the Company and its Associated Companies relating to any matter(s), including without limitation for the purpose of product, market analysis, marketing collateral and reference into marketing collateral, credit analysis and statistical compilation.
- 17.2 In relation to any Client, the Company may make enquiries at any time with credit reference agencies which will keep a record of such enquiry whether or not credit is granted. Where credit is granted, the Company may also disclose details about the Client's account with the Company, and the Client's conduct of the account to credit agencies or to other agencies or to debt collection agencies.
- 17.3 In Conditions 15.1 and 15.2 above, references to "the Client" shall be deemed to include (but without limitation) officers, employees, contractors and agents in relation to which the Company receives personal data arising out of or in connection with the Company providing products and/or services with the Client (or its Associated Companies).
- 17.4 The Company shall take appropriate technical and organisational measures against unauthorised or unlawful processing of personal data and against accidental loss and destruction of, or damage to, personal data.

18 Entire Agreement

- 18.1 These terms and conditions supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the subject matter of these terms and conditions. However the obligations of the parties under any pre-existing non-disclosure agreement shall remain in full force and effect in so far as there is no

conflict between the same. The parties confirm that they have not entered into these terms and conditions on the basis of any representation that is not expressly incorporated into these terms and conditions.

19 Intellectual Property Rights

- 19.1 Any assignments of Intellectual Property shall be identified and assigned according to the client products and services requirements. These will be identified and agreed at the requirements gathering.
- 19.2 All external IPR licenses will be identified and listed within the IPR document, a copy of which will be provided to the client at the end of the project delivery;
- 19.3 The Company has no control over any third party integration IPR, and can only advise the clients based on use of the integration facilities requested and third party integration IPR constraints if identified, and referenced in the IPR schedule.
- 19.4 The client agrees expressly not to sell or re-distribute the products or services supplied by the Company to create a revenue stream on a licensable basis, unless otherwise agreed in writing by both parties, and in accordance to the IPR schedule.

20 Jurisdiction

- 20.1 The Contract (including these terms and conditions) shall be governed by common law jurisdiction in the courts of England and Wales unless expressly agreed elsewhere.