

# TERMS AND CONDITIONS OF BUSINESS

The Customer's attention is drawn in particular to the provisions of clauses 13 (Limitation of Liability) and 17 (Introducer's Fee).

## 1. DEFINITIONS

- (a) "Additional Terms" mean the terms applicable to the specific Services referred to in the Order as may be in force from time to time and which are incorporated into these terms and conditions by reference.  
"Contract" means the contract between the Company and the Customer for the supply of Goods and/or Services under these terms and conditions and the Order.  
"Company" means **TRIDENT COMPUTERS (UK) LIMITED TRADING AS TRIDENT** (registered in England and Wales no: 02581305).  
"Customer" means the person or firm who purchases the Goods and/or Services from the Company.  
"Goods" mean the equipment, materials, components and software as set out in the Order.  
"Intellectual Property Rights" mean patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.  
"Order" means the Customer's order for the supply of Goods and/or Services either by way of the Customer's purchase order form, or the Customer's written or verbal acceptance of the Company's quotation, or the return of a completed Order Form, as the case may be and in each case which must be accepted by the Company.  
"Order Form" means a Company order form.  
"Services" mean the services to be provided to the Customer as described in the Company's confirmation of acceptance of the Order to the Customer in Writing.  
"Writing" means communication by e-mail, post, fax or hand delivery. Such written communication will not be deemed served on the Company until received by the Company.
- (b) The headings in these terms and conditions are for convenience only and shall not affect their interpretation.

## 2. THE CONTRACT

- (a) An Order placed by the Customer constitutes an offer to purchase the Goods and/or Services in accordance with these terms and conditions and the Additional Terms.
- (b) An Order shall only be deemed to be accepted by the Company when the Company issues confirmation of the Order in Writing to the Customer or (if earlier) the Company fulfils the Order to the Customer, at which point the Contract comes into existence.
- (c) The Contract constitutes the entire agreement between the parties and the Customer acknowledges that it has not relied upon any statement, promise, representation, assurance or warranty made or given by or on behalf of the Company which is not set out in the Contract.
- (d) If there is any inconsistency between these terms and/or the Additional Terms, the Additional Terms shall prevail.
- (e) The Company's employees or agents are not authorised to make any representation concerning the Goods or Services unless confirmed by an authorised representative of the Company in writing. In entering into the Contract the Customer acknowledges that it does not rely upon any such representation which is not so confirmed.
- (f) Any advice or recommendation given by the Company or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Goods or in relation to the supply of the Services which is not confirmed in Writing by the Company is followed or acted upon entirely at the Customer's own risk and the Company shall not be liable for any such advice or recommendation which is not so confirmed.
- (g) Any quotation issued by the Company shall comprise an invitation to treat and is not capable of acceptance so as to make a legally binding contract. Quotations issued by the Company are valid until the end of the calendar month of their issue.
- (h) These terms and 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. The Customer accepts that any Goods or Services received by him or any contract between the Company and Customer, shall be deemed to be acceptance of these terms and conditions.
- (i) No changes to these terms and conditions or any Additional Terms are valid or have any effect unless agreed by the Company in writing. The Company reserves the right to amend these terms and conditions and any Additional Terms from time to time. Please look at the end of these terms or any Additional Terms to see when they were last updated. Every time the Customer's Order is accepted by the Company in accordance with clause 2(b), the Company's terms and conditions and any applicable Additional Terms in force at the time of acceptance will apply to the Contract between the Company and the Customer.
- (j) Any typographical, clerical or other error or omission in any written or printed document or information issued by the Company shall be subject to correction or alteration at any time without any liability on the part of the Company.
- (k) The Customer acknowledges that: it purchases the Goods and/or Services in a competitive market and that the bargaining strength of the Company was not a relevant factor; it received no inducement to agree to any term herein; it knows and understands the existence, extent and meaning of these conditions; it knows and understands the restriction or exclusion of any rights given to it in this Contract or by any of the implied or express conditions and warranties contained in the Sale of Goods Act 1979 and/or the Supply of Goods and Services Act 1982 or any other enactment or any other principle in law or equity and that it accepts the restriction or exclusion of those conditions as being fair and reasonable having regard to all the circumstances at the time of entering into the Contract.

## 3. ORDERS

- (a) The Customer shall be responsible to the Company for ensuring the accuracy of the terms of any Order (including any applicable specification), and for giving the Company any necessary information relating to the Goods or Services and within a sufficient time to enable the Company to perform the Contract in accordance with its terms. The Customer is entirely responsible for satisfying itself that all Goods or Services supplied by the Company (including any descriptions, data, drawings, advice, recommendations or other information provided by the Company in relation to those Goods or Services) are entirely suitable for the Customer's purposes, having particular regard to relevant on-site conditions, the nature of any existing equipment of the Customer or other circumstances of the application of the Goods or Services known only to the Customer or any particular purpose intended for any Goods.

- (b) No order which has been accepted by the Company may be cancelled by the Customer except with the agreement in Writing of the Company and on terms that the Customer shall indemnify the Company in full against all loss, costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company.
- (c) The Company reserves the right to delegate or sub-contract any part of the Services or any preparation or supply of the Goods.
- (d) The Company shall not be responsible for adapting or modifying the Goods to conform to statutory requirements not current at the time of the acceptance of order.
- (e) In the event of the cancellation of any order under clause 3(b), the Company may charge the Customer a restocking fee for the return of the Goods.

#### **4. GOODS**

- (a) The quantity, quality and description of and any specification for the Goods shall be those set out in the Company's quotation or written confirmation of the Order.
- (b) All descriptive weights, dimensions and the descriptions and illustrations contained in the Company's sales literature and price lists are approximate only and shall not form part of this Contract. In addition, drawings or technical documents issued either before or after the conclusion of this Contract for the use or information of the Customer and such other information as may be supplied to the Customer including specifications shall not be copied, reproduced or communicated to any third party without the Company's prior consent in Writing.
- (c) The Company reserves the right to make any reasonable changes in the specification of any Goods which do not materially affect their quality or performance. Should any materials or parts specified or required for completion of the Contract be unavailable, the Company is entitled to supply a suitable substitute and this shall be accepted by the Customer in full satisfaction and performance of the Company's obligations in that regard.

#### **5. DELIVERY**

- (a) Unless otherwise agreed by the parties in Writing, delivery of the Goods shall be made by the Company delivering the Goods to the place stated in the Company's quotation.
- (b) Delivery of the Goods shall be completed when the Goods arrive at the delivery location.
- (c) Any dates or periods of time quoted for delivery of the Goods are approximate only shall not be of the essence of the Contract unless expressly agreed by the Company in Writing. The Company shall not be liable for any delay in delivery or supply that is caused by the Customer's failure to provide adequate delivery instructions or any other instructions relevant to the supply of the Goods or Services. The Company shall not be liable for any delay in delivery or supply however caused.
- (d) If the Company fails to deliver the Goods, its liability shall be limited to costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.
- (e) When the Company has agreed in Writing to deliver the Goods to the Customer's premises by a third party carrier, the Customer accepts liability for the condition of the Goods upon delivery. The Customer warrants that it will inspect and reject the delivery if the Goods or the packaging are or appear damaged otherwise the Customer will be deemed to have accepted the Goods in that condition.
- (f) Where the Company has agreed in Writing to deliver the Goods to the Customer's premises the Company shall be entitled to repair or replace free of charge or allow credit for any Goods lost or damaged in transit, provided that the Customer gives written notice of a claim to the Company:
  - (i) in the case of damage, within 3 days after having received the goods; and
  - (ii) in the case of loss or shortage, within 3 days of the date of invoice.
- (g) If the Customer fails to accept or take delivery of the Goods, the Company reserves the right to put the Goods or any portion or part thereof into storage at the Customer's risk and expense. The Company may in such circumstances at such time as it determines sell the Goods at the best price readily obtainable and the Customer shall be responsible to the Company for any shortfall between that price and the relative price under the Contract.
- (h) The Company reserves the right to make delivery by instalments and to tender a separate invoice in respect of each instalment.
- (i) If the Goods are to be delivered or Services supplied in instalments, each delivery or supply shall constitute a separate Contract and failure by the Company to deliver or supply any one or more instalment shall not entitle the Customer to treat the Contract as a whole as repudiated.

#### **6. INSTALLATION AND COMMISSIONING**

- (a) Should the Company have agreed in writing to install and/or commission any Goods at the Customer's premises or elsewhere, subject to clause 13(i) the Company shall be under no liability for any direct or indirect loss or damage howsoever arising caused to the Customer or to any third party as a result of or in connection with such installation or commissioning.
- (b) If any Goods are to be installed or commissioned by the Company at the Customer's premises then the Customer shall not use the Goods pending the completion of such installation or commissioning.

#### **7. RISK AND TITLE**

- (a) Risk in the Goods shall pass to the Customer on delivery.
- (b) The title to the Goods shall not pass to the Customer until the Company has received, in cash or cleared funds, payment in full of the price of the Goods and all other Goods agreed to be sold or Services to be supplied by the Company to the Customer for which payment is then due, together with all other monies payable in relation thereto by the Customer to the Company.
- (c) Until such time as the title to the Goods passes to the Customer, the Customer shall hold the Goods as the Company's fiduciary agent and bailee, and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected, insured, clearly marked and identified as the Company's property and shall not annex the Goods to any premises without the Company's written permission. Should the Customer resell or otherwise dispose of the Goods but not have accounted to the Company for the price of the Goods and all other Goods agreed to be sold and Services to be supplied by the Company to the Customer and all other relevant monies, the Customer shall keep such proceeds of sale or other monies that are due and payable to the Company in a separate bank account and separate from any other monies or properties of the Customer and third parties.
- (d) Until such time as the title to the Goods passes to the Customer the Company shall be entitled at any time to require the Customer to deliver up the Goods to the Company and shall have irrevocable licence to enter upon the premises of the Customer or of any third party where the Goods are stored and inspect or repossess the Goods. The Customer shall in any relevant contract with any third party protect this right of the Company.
- (e) The Customer shall not be entitled to pledge or in any way charge by way of security or any indebtedness any of the Goods which remain the property of the Company, but if the Customer does so, all monies owing by the Customer to the Company shall forthwith become due and payable without prejudice to any other right or remedy of the Company.

- (f) The Company is entitled to maintain an action or claim for the price of the Goods even though the property in them may not have passed to the Customer.

## **8. SERVICES**

- (a) The Company shall provide the Services to the Customer.
- (b) The description of and any specification of the Services shall be those set out in the Company's quotation or written confirmation of the Order.
- (c) The Company shall use all reasonable endeavours to meet any performance dates for the Services specified to the Customer, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- (d) The Company shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Company shall notify the Customer in any such event.
- (e) The Company warrants to the Customer that the Services will be provided using reasonable care and skill.

## **9. CUSTOMER'S OBLIGATIONS**

- (a) The Customer shall:
- (i) ensure that the terms of the Order are complete and accurate;
  - (ii) co-operate with the Company in all matters relating to the Goods and/or Services;
  - (iii) provide the Company, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Company to provide the Goods and/or Services;
  - (iv) provide the Company with such information and materials as the Company may reasonably require to supply the Goods and/or Services, and ensure that such information is accurate in all material respects;
  - (v) if required by the Company, prepare the Customer's premises for the supply of the Goods and/or Services;
  - (vi) obtain and maintain all necessary licences, permissions and consents which may be required for the Goods and/or Services before the date on which the Goods are supplied and/or the Services are to start;
  - (vii) follow the advice given by the Company in relation to maintaining and enforcing security;
  - (viii) ensure that the data backup and disaster recovery solutions they operate are operable, even if the Company are supplying that service; and
  - (ix) not use the Goods and/or Services in any manner or for any purpose which is unlawful.
- (b) If the Company's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("Customer Default"):
- (i) the Company shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Company's performance of any of its obligations;
  - (ii) the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause 9(b)(ii); and
  - (iii) the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer Default.

## **10. PRICE**

- (a) The price of the Goods or Services shall be the Company's quoted price, which unless otherwise stated, is an estimate and not fixed.
- (b) Unless otherwise stated any prices quoted by the Company are:
- (i) exclusive of value added tax and any other taxes;
  - (ii) exclusive of carriage, packing and insurance;
  - (iii) exclusive of any release certificates,
- and the Company shall charge extra in respect of the above items.
- (c) The Company reserves the right, by giving notice to the Customer at any time before delivery of the Goods or any time before, during or after supply of the Services, to increase the price of the Goods or Services to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture passed on to the Company by the manufacturer) or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.
- (d) The Company reserves the right by giving notice to the Customer to increase the price of the Goods when call offs or delivery schedules previously agreed between the parties are not adhered to by the Customer.

## **11. PAYMENT**

- (a) The Customer shall pay the price of the Goods and/or Services without any deduction upon receipt of the Company's invoice. The Company may, at its discretion, allow the Customer to make payment of an invoice within 30 days of any such invoice.
- (b) If the Company is able to deliver some items comprising the Goods or Services but is unable to deliver all such items due to causes beyond its control the Customer shall pay for such Goods or Services as are delivered.
- (c) The Customer shall pay the price of the Goods or Services notwithstanding that delivery may not have taken place and the property in the Goods or Services has not passed to the Customer. The time of payment of the price shall be of the essence of the Contract.
- (d) If the Customer fails to make payment in full on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to; cancel the contract (or outstanding part thereof); suspend any further deliveries of Goods or Services to be rendered to the Customer; appropriate any payment made by the Customer to such of the Goods or Services (or the Goods or Services supplied under any other contract between the Customer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Customer) and/or charge the Customer's interest (both before and after any judgment) on the amount unpaid at the rate of eight per cent per annum above National Westminster Bank PLC's base rate from time to time. Until payment in full is made, such interest is to accrue on a daily basis. If it be held that the Company is not entitled to rely upon this provision, the Company will rely upon the statutory provision in respect of interest pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.
- (e) All purchases made via credit and debit cards will be subject to a surcharge imposed by the individual credit card company which will be charged to the Customer as itemised on the invoice.
- (f) The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. The Company may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Company to the Customer.

## 12. WARRANTIES

- (a) The Company warrants that if the Goods are manufactured by the Company they will, on delivery, perform in accordance with their specification save that the Company shall be under no liability in respect of any defect in the Goods, components, materials or parts arising from any fault or defect in any drawing, design, information or specification supplied by the Customer nor in respect of any fault or defect arising from fair wear and tear, willful damage, negligence by the Customer or by a third party, abnormal working conditions, failure to follow the Company's or manufacturer's instructions, misuse or alteration or repair of the Goods without the Company's approval.
- (b) Any claim by the Customer pursuant to such above warranty by the Company shall be conditional upon:
  - (i) the Company being notified in writing within 7 days of the Customer discovering any such defect and in any event during the currency of such warranty;
  - (ii) the defective Goods being returned to the Company at the Customer's expense; and
  - (iii) identification of the defect by the Company upon examination of such Goods, the costs of which shall at the discretion of the Company be paid by the Customer forthwith.
- (c) In such circumstances the Company shall at its discretion be entitled to replace or repair such Goods (or the part in question) free of charge or refund to the Customer the price of the Goods (or a proportionate part of the price) and the Customer shall accept the replacement, repair or refund in full and final satisfaction and the Company shall have no further liability to the Customer. In such circumstances the Customer is responsible for copying or backing up any data or information on or in any Goods as the Company is not responsible for the loss or corruption of any such data or information.
- (d) If the Goods are not manufactured by the Company they are not guaranteed or warranted by the Company and are sold entirely subject to the terms and conditions of any relevant manufacturer's guarantee or warranty and the Customer must rely upon any guarantee provided by the manufacturer. The Company assigns to the Customer the benefit of any such guarantee or warranty so far as it is capable of assignment. The Company does not warrant that any software not created or manufactured by the Company is free from any virus, trojan, spyware, malware, or similar.
- (e) Except as provided for in this clause 12, the Company shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 12(a).
- (f) These terms and conditions shall apply to any repaired or replacement Goods supplied by the Company under clause 12 (c).

## 13. LIMITATION OF LIABILITY

- (a) Subject to clause 13(i) the Company shall not be liable to the Customer for any claim for direct, indirect or consequential economic or other losses, damages or liabilities such as (without limitation) lost profits, revenue, costs including legal and other professional costs, removal, storage or other expenses, or other claims to any consequential compensation whatsoever, arising from or in connection with any representation or any express or implied warranty, condition or other contract term or any duty at common law or pursuant to statute which arises out of or in connection with the sale or supply of the Goods or Services except as expressly provided in these terms and conditions. The parties will use their best endeavours in allocating resources to minimise any such losses.
- (b) The Company shall not be liable to the Customer or be deemed to be in breach of the Contract or any part thereof by reason of any delay in performing or any failure to perform, any of the Company's obligations in relation to the Goods or Services if the delay or failure was due either directly or indirectly to any cause beyond the Company's reasonable control including but not exclusively; act of God, explosion, flood, earthquake, subsidence, tempest, fire or accident; war or threat of war or preparation for war, sabotage, collapse of structure, insurrection, civil disturbance or requisition; acts, restrictions, regulations, bye-laws, prohibitions or measure of any kind on the part of any governmental, parliamentary or local authority, import or export regulation or embargo; strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party); unexpected difficulties in obtaining raw materials, labour, fuel, parts or equipment; power failure or unforeseeable breakdown in equipment.
- (c) The Company shall not be liable for any loss suffered by the Customer in respect of any failure or delay in the provision of the Services that results from a failure or delay in the availability of any third party software or service which the Company uses or relies upon in order to provide the Services to the Customer.
- (d) The Company's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract, shall be limited to the total sums paid by the Customer under the Contract during the 12-month period immediately preceding the date of the event giving rise to the claim.
- (e) The Customer warrants that it shall have at all material times an effective policy of insurance to cover any liability or claim that may arise in respect of the Goods or Services (including but not limited to direct, indirect and consequential losses).
- (f) The Company is not liable for the loss or corruption of any of the Customer's information or data held on or in any of the Customer's equipment, materials, components or software which may be lost or corrupted during the Company's maintenance, repair or upgrading of such equipment, materials, components or software and the Customer accepts responsibility for protecting and/or preparing a "back-up" copy of any such information or data, and in the event that the Company provides back up services to the Customer for checking the "back-up" copy, in both cases prior to the Company carrying out such Services.
- (g) If during the Company's supply of the Goods or Services it connects the Customer's equipment, materials or components to the Internet or any other dial up or telephony service, the Company is not liable for any such connection charges or fees nor for ensuring that the Customer's equipment, materials or components are disconnected or continue to be disconnected from the Internet or any other dial up or telephony service nor for any charges or fees that may arise from such disconnection not being properly effected.
- (h) The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- (i) Nothing in these terms and conditions shall limit or exclude the Company's liability for:
  - (i) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - (ii) fraud or fraudulent misrepresentation;
  - (iii) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
  - (iv) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
  - (v) defective products under the Consumer Protection Act 1987.

## 14. INSOLVENCY OF CUSTOMER

- (a) These clauses apply if the Customer enters a voluntary arrangement with its creditors, or has or had a petition or an administration order with its creditors presented against it, or becomes subject to an administration order, or becomes insolvent, goes into compulsory or voluntary liquidation or a provisional liquidator or a receiver and/or manager or administrative receiver is appointed, an encumbrancer takes possession of any of the property or assets of the Customer or if the Customer ceases, or threatens to cease, to carry on any business, fails to or refuses to pay in full any sum due and payable by the Customer to the Company on the due date for payment, fails to take delivery of the Goods or any part thereof

otherwise than in accordance with the Customer's contractual rights under the Contract, or the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer.

- (b) If clause 14(a) applies then without prejudice to any other right or remedy available to the Company, the Company shall be entitled to immediately cancel the Contract or any part thereof or suspend any further deliveries of Goods or Services under the Contract without any liability to the Company, or require a cash payment before any further delivery of Goods or Services is provided. If the Goods or Services have been delivered or supplied but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary or other remedy available to the Company.
- (c) The Company shall at any time prior to the price being paid, be entitled to enquire of the Customer the Customer's financial position and the Customer shall provide such information forthwith as the Company shall reasonably require.

#### **15. CONFIDENTIALITY AND COMPANY'S PROPERTY**

- (a) The Customer (receiving party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the Company (disclosing party), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.
- (b) All materials, equipment and tools, designs, drawings, specifications and information supplied in connection with the Goods or Services by the Company to the Customer shall at all times be and remain the exclusive property of the Company, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Company, and shall not be disposed of or used other than in accordance with Company's written instructions or authorisation.
- (c) All designs, drawings, specifications and information supplied in connection with the Goods or Services are confidential and their use must be strictly confined to the Customer's work and to the process of this Contract.

#### **16. INTELLECTUAL PROPERTY RIGHTS**

- (a) All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Company.
- (b) The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on the Company obtaining a written licence from the relevant licensor on such terms as will entitle the Company to license such rights to the Customer.
- (c) All Intellectual Property Rights in all input materials which existed before the Contract and which are supplied by the Customer and the Company for the purpose of the Services hereunder shall remain the property of the Customer and the Company.
- (d) The Customer will fully and effectively indemnify the Company against all actions, costs, claims, damages and demands whensoever made arising from any breach or alleged breach of Intellectual Property Rights resulting from the Company's use of any materials supplied by the Customer in connection with the Goods and/or Services hereunder including but not limited to any drawings, designs or plans and this clause shall remain in full force and effect notwithstanding delivery of the Goods and/or supply of the Services and completion of the Contract.

#### **17. INTRODUCER'S FEE**

In the event that the Customer employs or engages or otherwise facilitates the employment or engagement of any employee of the Company with whom the Customer has, in connection with the Contract, had prior dealings within the preceding 12 months, the Customer shall pay to the Company an introducer's fee, the amount of which shall be equal to 50% of his or her annual salary.

#### **18. DATA PROTECTION**

- (a) For the purpose of the Data Protection Act 1998, Trident Computers (UK) Limited trading as Trident is the 'data controller' (as defined under the Act) and will use the personal data the Customer provides in the course of and as a result of becoming a 'Customer' for the purposes of supplying the Goods and/or Services, improving the Services, statistical analysis and marketing. The Company may share the Customer's personal data with the Company's third party service providers.
- (b) As part of the Company's performance of the Services, the Company may process personal data as a data processor on the Customer's behalf. This may include personal data (including sensitive personal data) relating to the Customer's clients, staff and other contacts. In respect of such data, the Company agrees as follows: (i) to only process such data for the purpose of performing the Services, unless otherwise agreed with the Customer; and (ii) in performing the Services, to implement reasonable technical and organisational security measures to protect the said data against unauthorised or unlawful processing and against accidental loss or destruction of, or damage to the same.

#### **19. HEALTH AND SAFETY**

- (a) The Customer shall be responsible for ensuring that all statutory, government, E.C. or local authority requirement or direction is complied with in relation to the use of any Goods provided by the Company and the Company gives no warranty that the Goods, or any instructions for their use, comply with any such requirement or direction or in particular with any requirement of the Health and Safety at Work Act 1974 and the Customer shall indemnify the Company in respect of any liability, monetary penalty or fine howsoever arising.
- (b) The Customer shall use cautionary notices, warnings, information or advices which may be supplied to him by the Company or otherwise available to him from third parties.
- (c) The Company reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements.

#### **20. DISPUTES**

- (a) If either party has any dispute with the other in connection with the Contract, then that party will promptly give full written particulars of the dispute to the other party, and the parties will, within 28 days of delivery of those particulars, meet and in good faith try to resolve the dispute.
- (b) If the dispute is not resolved within seven (7) days of written particulars being given to the parties (or any longer period agreed to by the parties) the dispute shall be escalated to the managing director or someone of equivalent standing and authority of the Customer and the Company (the "Escalation Committee") for resolution.
- (c) If within 14 days of the dispute being referred to the Escalation Committee it is not resolved and the financial value of the dispute exceeds the County Court Small Claims upper limit the parties shall consider the appropriateness of resolving such dispute by mediation in accordance with the Centre for Dispute Resolution (CEDR) model mediation procedure in such form

as is recommended by CEDR. Any dispute arising under or in connection with the Contract not so resolved by mediation shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of the Chartered Institute of Arbitrators in accordance with the Arbitration Act 1975.

## **21. GENERAL**

- (a) Any notice to be given to the Company shall be in Writing.
- (b) No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision. If any provision of these conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the remainder of the provision in question and any other provision of these conditions shall not be affected thereby.
- (c) 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
- (d) A person who is not a party to the Contract shall not have any rights to enforce its terms.
- (e) Any reference in these conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- (f) The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales.
- (g) Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

These terms and conditions were last updated on 13 September 2016.