

**TERMS AND CONDITIONS for the Supply of Hardware, Software, Installation and Training**

**1. Interpretation**

- 1.1. In these terms, the following words and phrases shall have the following meanings:
  - 1.1.1. **Contract:** these terms, Client's order and the Supplier's Order Acknowledgement
  - 1.1.2. **Client:** the person, firm or company who purchases Equipment from the Supplier.
  - 1.1.3. **Equipment:** the Hardware and Software agreed to be purchased by the Client from the Supplier as set out in the Order Acknowledgement.
  - 1.1.4. **Hardware:** all physical items listed in the Order Acknowledgement.
  - 1.1.5. **Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
  - 1.1.6. **Location:** the Client's premises where the Equipment is to be installed as specified in the Order Acknowledgement, or, if none, the Client's principal place of business.
  - 1.1.7. **Order Acknowledgement:** the written acknowledgement of order produced by the Supplier.
  - 1.1.8. **Services:** the installation and training services to be supplied by the Supplier listed in the Order Acknowledgement.
  - 1.1.9. **Software:** any operating system or other third party software listed in the Order Acknowledgement.
  - 1.1.10. **the Supplier:** Limbtec Ltd..
- 1.2. The headings do not affect the interpretation of the Contract.
- 1.3. Any reference to a party's employees includes its agents and sub-contractors.

**2. Application of terms**

- 2.1. These terms and conditions shall:
  - 2.1.1. apply to and be incorporated in the Contract;
  - 2.1.2. apply to all dealings between the Supplier and the Client; and
  - 2.1.3. prevail over any inconsistent terms or conditions contained in or referred to in the Client's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.
- 2.2. No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on the Supplier unless in writing and signed by a duly authorised representative of the Supplier.
- 2.3. If the Client wishes to vary any part of the Contract, the request shall be sent in writing to the Supplier. The Supplier shall respond to the Client within 7 working days as to whether it is prepared to agree to the change and, if so, details of the cost of the change, any effect on any other part of the Contract including any change in timescales. The Client may accept such proposal within such time as the Supplier may specify or, if none, within 30 days, failing which it shall be deemed rejected. Pending acceptance or rejection the Supplier may continue to perform the Contract without reference to the request.

**3. Basis of sale**

- 3.1. Any quotation is valid for a period of 30 days only, and the Supplier may withdraw it at any time by notice to the Client.
- 3.2. Each order or acceptance of a quotation for Equipment by the Client shall be deemed to be an offer by the Client subject to these conditions. The Client shall ensure that its order is complete and accurate.
- 3.3. A binding contract shall not come into existence between the Supplier and the Client unless and until the Supplier issues an Order Acknowledgement to the Client, or, if earlier, when the Supplier begins to deliver the Equipment to the Client.
- 3.4. The Supplier may deliver and invoice the Equipment in installments.
- 3.5. No Contract may be cancelled by the Client, except with the agreement in writing of the Supplier and provided that the Client indemnifies the Supplier in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of the cancellation.

**4. Order details**

- 4.1. The Equipment and the Services shall be as set out in the Supplier's Order Acknowledgement or (if there is no Order Acknowledgement) quotation.
- 4.2. All drawings, descriptive matter, specifications and advertising issued by the Supplier, and any descriptions or illustrations contained in the catalogues or brochures provided by the Supplier, unless attached to the Order Acknowledgement, are provided for illustrative purposes only and do not form part of the Contract.
- 4.3. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, Order Acknowledgement, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.
- 4.4. The Supplier reserves the right to make any changes in the specification of the Equipment which do not materially affect their quality or performance.
- 4.5. The Supplier shall use reasonable endeavours to transfer to the Client the benefit of any warranty or guarantee given by the manufacturer of the Hardware and the licensor of the Software.
- 4.6. The Supplier's employees are not authorised to make any contractually binding representations concerning the Equipment. In entering into the Contract, the Client acknowledges that it does not rely on, and waives any claim for breach of, any such representations which have not been confirmed in writing by an authorised officer of the Supplier.
- 4.7. Any advice or recommendation given by the Supplier or its employees to the Client or its employees about the storage, application or use of the Equipment which is not confirmed in writing by an authorised officer of the Supplier is followed or acted on entirely at the Client's own risk.

**5. Prices**

- 5.1. All prices shall be as stated in the Supplier's Order Acknowledgement. All prices are exclusive of VAT.
- 5.2. The Supplier reserves the right, by notice to the Client before delivery, to increase the price of any undelivered Equipment to reflect any increase in the cost to the Supplier due to any change in delivery dates, quantities or specifications for the Equipment requested by the Client, or any delay caused by the Client.

**6. Payment**

- 6.1. Invoices shall be paid within 30 days of their date, whether or not delivery has taken place or title in the Equipment has passed to the Client.
- 6.2. Time for payment of the Supplier's invoices shall be of the essence of the Contract.
- 6.3. If the Client fails to make payment in full on the due date, the whole of the balance of the price of the Equipment and the Services then outstanding shall become immediately due and payable and, without prejudice to any other right or remedy available to the Supplier, the Supplier may:
  - 6.3.1. appropriate any payment made by the Client to any outstanding sum;
  - 6.3.2. charge interest on the amount outstanding from the due date to the date of receipt by the Supplier (whether or not after judgment), at the annual rate of 5% above the then current base lending rate of Lloyds Bank plc, accruing daily and compounded quarterly; and
  - 6.3.3. suspend all further delivery of equipment, provision of services (in each case whether ordered under these Terms and Conditions or not) or service under warranty until payment has been made in full.

**7. Delivery and Installation of Equipment**

- 7.1. The Supplier shall use its reasonable endeavours to deliver and install the Equipment and provide the Services on the date or dates specified in the Supplier's Order Acknowledgement at the Location, but any such date is approximate only. If no dates are so specified, delivery shall be within a reasonable time. Time is not of the essence as to the delivery of the Equipment or the provision of the Services.
- 7.2. Delivery and installation shall be made during normal business hours and the Supplier may levy additional charges for any deliveries made outside such hours at the Client's request.
- 7.3. The Client shall be responsible (at the Client's cost) for preparing the Location for the delivery and installation of the Equipment.
- 7.4. Upon the request of the Supplier, the Client will appoint a project manager with authority to bind the Client and through whom all communication will be passed.
- 7.5. Where the Supplier is not installing the Equipment:
  - 7.5.1. the Supplier shall be responsible for any damage, shortage or loss in transit, provided that the Client notifies the Supplier (or its carrier, if applicable) within 3 working days of delivery or the proposed delivery date of the Equipment. Any remedy under this condition shall be limited, at the option of the Supplier, to the replacement or repair of such Equipment which is proven to the Supplier's satisfaction to have been lost or damaged in transit; and
  - 7.5.2. the Client shall be deemed to have accepted the Equipment when the Client has had 7 working days to inspect it after delivery or, if earlier, when the Client uses the Equipment other than for test purposes.

**8. Risk and property**

- 8.1. The Equipment shall be at the risk of the Supplier until delivery and installation of the Equipment at the Location.
- 8.2. Ownership of the Equipment shall pass to the Client on the later of completion of delivery and installation, or when the Supplier has received in full in cleared funds all sums due to it due to the Supplier from the Client on any account.
- 8.3. Until ownership of the Equipment has passed to the Client under this condition, the Client shall:
  - 8.3.1. hold the Equipment on a fiduciary basis as the Supplier's bailee;
  - 8.3.2. not destroy, deface or obscure any identifying mark or packaging on or relating to the Equipment; and
  - 8.3.3. keep the Equipment insured on the Supplier's behalf for its full price against all risks to the reasonable satisfaction of the Supplier, and hold the proceeds of such insurance on trust for the Supplier and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 8.4. The Client's right to possession of the Equipment before ownership has passed to it shall terminate immediately if any of the circumstances set out in condition arise or if the Client encumbers or in any way charges the Equipment, or if the Client fails to make any payment to the Supplier on the due date.
- 8.5. The Client grants the Supplier and its employees an irrevocable licence at any time to enter any premises where the Equipment is or may be stored in order to inspect it, or where the Client's right to possession has terminated, to remove it. All costs incurred by the Supplier in repossessing the Equipment shall be borne by the Client.
- 8.6. On termination of the Contract for any reason, the Supplier's (but not the Client's) rights in this condition shall remain in effect.

**9. Demonstration and acceptance of the Equipment**

- 9.1. If the Supplier is installing the Equipment then the provisions of this condition shall apply.
- 9.2. After completion of delivery and installation the Supplier shall demonstrate the Equipment to the Client and the Equipment shall then be deemed accepted by the Client. The Client shall if required by the Supplier sign the certificate of completion or the delivery note. If at any time the Client makes use of the Equipment other than for training or test purposes then the Equipment will be deemed to be accepted.

**10. Software licence**

- 10.1. If Software is included the Order Acknowledgement, the price of the Equipment includes the licence fee for the Client's right to use the Software in accordance with the manufacturer's current licensing conditions and any further restrictions included in the Order Acknowledgement.

**11. Warranties**

- 11.1. The Supplier warrants to the Client that the Equipment is free from defects of workmanship and materials and that the Services will be carried out with reasonable care and attention.
- 11.2. The Supplier undertakes (subject to the remainder of this condition), at its option, to repair or replace Equipment (other than Software or consumable items) which is found to be defective as a result of faulty materials or workmanship within twelve months of acceptance. In the case of Equipment installed by the Supplier, repairs will be carried out at the Location for the first three months of acceptance; otherwise it is the responsibility of the Client to return the Equipment to the Supplier and to collect after repair or replacement.
- 11.3. In respect of Software, the Supplier will during the twelve months after acceptance provide assistance in communicating with the licensor of the Software regarding faults so far as it is able.
- 11.4. The Supplier shall not be liable for a breach of the warranty in condition if:

- 11.4.1. the defect arises because the Client failed to follow the Supplier's or manufacturer's instructions for the Equipment;
- 11.4.2. the defect arises as a result of misuse of the Equipment; or
- 11.4.3. the Client alters or repairs the relevant Equipment without the written consent of the Supplier.
- 11.5. Any repaired or replacement Equipment shall be under warranty for the unexpired portion of the twelve month period.
- 11.6. The person or persons signing the certificate of completion or delivery note warrant that they have authority to sign the same on behalf of the Client.

## 12. Remedies

- 12.1. The Supplier shall not be liable for any non-delivery of Equipment (even if caused by the Supplier's negligence) unless the Client notifies the Supplier in writing of the failure to deliver within 7 days after the scheduled delivery date.
- 12.2. Any liability of the Supplier for non-delivery of the Equipment shall be limited to replacing the Equipment within a reasonable time or issuing a credit note at the pro rata contract rate against any invoice raised for such Equipment.
- 12.3. If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Client (other than by reason of a Force Majeure Event), the Client shall be liable to pay to the Supplier all reasonable costs, charges or direct losses sustained by it as a result, subject to the Supplier notifying the Client in writing of any such claim it might have against the Client in this respect.
- 12.4. The Supplier shall not be liable for a breach of the warranty contained in condition unless:
  - 12.4.1. the Client gives written notice of the defect to the Supplier within fourteen days of when the Client discovers or ought to have discovered the defect; and
  - 12.4.2. the Supplier is given a reasonable opportunity of examining such Equipment and the Client (if asked to do so by the Supplier) returns such Equipment to the Supplier's place of business at the Supplier's cost for the examination to take place there.

## 13. Training

- 13.1. The Supplier undertakes to provide training in the use of the Equipment for the staff of the Client as set out in the Supplier's Order Acknowledgement.
- 13.2. Any additional training required by the Client shall be provided by the Supplier in accordance with its standard scale of charges from time to time in force.

## 14. Maintenance

- 14.1. If listed in the Supplier's Order Acknowledgement, the parties undertake to enter into a support and maintenance agreement within twelve months of successfully completing the Installation Tests in the Supplier's standard form.

## 15. Limitation of liability

- 15.1. The following provisions set out the entire liability of the Supplier (including any liability for the acts or omissions of its employees) to the Client in respect of any breach of the Contract and any representation, statement or tortious act or omission (including negligence) arising out of or in connection with the Contract.
- 15.2. All warranties, conditions and other terms implied by statute or common law are excluded from the Contract to the fullest extent permitted by law.
- 15.3. Nothing in these conditions excludes or limits the liability of the Supplier for death or personal injury caused by the Supplier's negligence or fraud or fraudulent misrepresentation.
- 15.4. Subject to condition :
  - 15.4.1. the Supplier shall not be liable for any loss of profits, loss of business, depletion of goodwill or similar losses or pure economic loss or for any special, indirect or consequential loss, costs, damages, charges or expenses howsoever arising; and
  - 15.4.2. the Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to £100,000.

## 16. Intellectual Property Rights

- 16.1. If the Supplier manufactures or modifies the Equipment or incorporates data or other information at the request of the Client, the Client shall indemnify and keep indemnified the Supplier against all losses, damages, costs, claims and expenses incurred by the Supplier in connection with any claim for infringement of any third party Intellectual Property Rights which results from that request.
- 16.2. The Supplier hereby assigns to the Client all existing and future Intellectual Property Rights in any software or documentation written specifically for the Client and included in the Equipment or the installation element of the Services.
- 16.3. The Client acknowledges that all other Intellectual Property Rights used by or subsisting in the Equipment are and shall remain the sole property of the Supplier or (as the case may be) the third party rights owner.
- 16.4. The Client's use of the Software shall be subject to the rights and restrictions imposed by the owner of the Intellectual Property Rights in the Software and user manuals and the Client shall comply with all licence agreements, terms of use and registration requirements.

## 17. Confidentiality

- 17.1. Each 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 by one party to the other. Each party shall restrict disclosure of such confidential material to such of its employees as need to know the same for the purpose of discharging its obligations under the Contract and shall ensure that such employees are subject to corresponding obligations of confidentiality.
- 17.2. All materials, drawings, specifications and data supplied by the Supplier to the Client shall at all times be and remain the exclusive property of the Supplier, but shall be held by the Client in safe custody at its own risk until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.
- 17.3. This condition shall survive termination of the Contract, however caused.

## 18. Non-Solicitation

- 18.1. Neither party shall, during the continuance of the Contract, or within 6 months of its termination, whether on behalf of itself or a third party, solicit or seek to entice away any employee of the other. In the event of breach of this clause the party in default shall pay the other a sum equal to six months gross pay of the employee concerned being a pre-estimate of the cost of recruitment and training a replacement.

## 19. Termination for Cause

- 19.1. Either party may terminate this agreement forthwith on giving notice in writing to the other if one party ceases to carry on business or commits any serious breach of any term of

this Agreement and (in the case of a breach capable of being remedied) shall have failed, within 7 days after the receipt of the request in writing from the other to do so, to remedy the breach.

- 19.2. The Supplier may terminate this Contract if the Client fails to pay any sum due under the terms of this Contract and such sum remains unpaid for 14 days after written notice from the Supplier that such sum has not been paid.
- 19.3. Termination of the Contract, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive or implicitly surviving termination.

## 20. Dispute Resolution Procedure

- 20.1. If any dispute arises in connection with this agreement, directors or other senior representatives of the parties with authority to settle the dispute will, within 7 days of a written request from one party to the other, meet promptly in good faith to resolve the dispute.
- 20.2. If the dispute is not resolved in accordance with condition , the dispute shall be referred to mediation and the mediator shall be appointed by the President of the Devon & Exeter Law Society.
- 20.3. If no mediation takes place within 28 days of the request under condition then the matter shall be referred to an expert, to be appointed, in default of agreement, on the request of either party to the President of the British Computer Society. He or she shall act as an independent expert and not as an arbitrator and his or her decision (including as to costs) shall, except in the case of manifest error, be final and binding upon the Supplier and the Client.

## 21. Data Protection Act

- 21.1. If any Personal Data (as defined by the Data Protection Act 1998) is passed to the Supplier under this Contract then the parties agree that the Client is the Data Controller and that the Supplier is the Data Processor.
  - 21.2. the Supplier shall:
    - 21.2.1. process the Personal Data only in accordance with instructions from the Client;
    - 21.2.2. process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Body;
    - 21.2.3. implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing or loss, destruction, damage, alteration or disclosure.;
    - 21.2.4. take reasonable steps to ensure the reliability and confidentiality of any of the Supplier's personnel who have access to the Personal Data.

## 22. Force Majeure

- 22.1. The Supplier reserves the right to defer the date of delivery and installation, or to cancel the Contract or reduce the amount of Equipment ordered, if it is prevented from or delayed in carrying on its business by acts, events, omissions or accidents beyond its reasonable control (Force Majeure Event).

## 23. Waiver

- 23.1. A waiver of any right under the Contract is only effective if it is in writing and signed by or on behalf of the waiving party, and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

## 24. Entire Agreement

- 24.1. The Seller constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.
- 24.2. Each party acknowledges that, in entering into this Contract, it has not relied on, and shall have no right or remedy (other than for breach of contract) in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this agreement.

## 25. Assignment

- 25.1. The Client shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 25.2. The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

## 26. Third party rights

- 26.1. The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.

## 27. Notices

- 27.1. Any notice required to be given pursuant to this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the address of the party as set out in these conditions, or by email to info@limbtec.com or, in each case, such other address as may be notified by one party to the other.
- 27.2. A notice delivered by hand is deemed to have been received when delivered (or, if delivery is not in business hours, 9.00 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. An e-mail shall be deemed to have been delivered within 24 hours from the time of being sent, provided that no "non-deliverable" notice is received by the sender.

## 28. Governing law and jurisdiction

- 28.1. The Contract and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the law of England and the courts of England shall have exclusive jurisdiction.