

WESTDEV LTD STANDARD TERMS AND CONDITIONS

1. DEFINITIONS

In these conditions "Company" shall mean WestDev Ltd; "Purchaser" includes the person, firm or body corporate to whom the Company's goods are supplied or are to be supplied; "Goods" means goods supplied or to be supplied by the Company to the Purchaser as stated in the order acknowledgement or as otherwise acceptable to the Company; "Software" means the software with which the Goods are supplied subject to condition 9 and "Licence" means the Licence Agreement, the conditions of which are stated on the media package and/or are comprised in or forming part of the Software.

2. APPLICABLE CONDITIONS

- 2.1. All orders are accepted and all Goods are supplied by the Company subject to these Conditions.
- 2.2. No other conditions (including any written terms and conditions of the Purchaser) will apply (except the conditions of the Licence) unless they are confirmed in writing by the Company.
- 2.3. No variations of these Conditions shall be effective unless a Director of the Company or nominee confirms it in writing on behalf of the Company.

3. PRICES

- 3.1. Prices are exclusive of
 - (a) any Value Added Tax which (if applicable) shall be paid by the Purchaser at the rate at the time of invoice
 - (b) delivery charges and costs of insurance of the Goods in transit
 - (c) customs duties
 - (d) all taxes, charges, portage and all other imports payable in the country of delivery
 - (e) storage, handling and administrative charges
- 3.2. The Company may alter the delivery charges by giving not less than 48 hours written notice to the Purchaser and such alteration may be made after the commencement of the transit of the Goods. All rates and charges when delivery is outside the United Kingdom are liable to be increased without notice.
- 3.3. Unless expressly stated otherwise, all prices for Goods are at the Company's list price and may vary from time to time.

4. PAYMENT

- 4.1. The Purchaser shall pay the Company for the Goods in Pounds Sterling 30 days from the date of the Company's invoice, unless agreed otherwise.
- 4.2. The Purchaser shall pay interest to the Company on any overdue amount from the due date until the dated payment at the rate of 2% per cent per year above the base lending rate of Lloyds Bank from time to time
- 4.3. The Purchaser may not by reason of any claim against the Company withhold payment of the price of the Goods, or claim any right of set-off against any payment due to the Company under this or any other contract.
- 4.4. The Company may appropriate any payment made by the Purchaser toward, the satisfaction of any invoice outstanding from time to time as the Company in its absolute discretion thinks fit.
- 4.5. If the purchaser fails to make any payment due to the Company on the due date:-
 - 4.5.1. The entire balance outstanding on all invoices from the Company to the Purchaser that become payable in full to the Company immediately without further demand, despite any provisions to the contrary in any invoice or otherwise; and
 - 4.5.2. the Company may, without prejudice to any other right or remedy available to it :-
 - (a) delay or withhold or suspend delivery under, or cancel, any or all orders and/or contracts with the Purchaser and/or
 - (b) retain any amount already paid to it by the Purchaser.
- 4.6. If the Purchaser delays or requests delay in payment for any of the Goods, for whatever reason, or in any way defaults in its obligations to the Company, or the Company has any reason to believe that the Goods are in jeopardy or that the Purchaser is unable to pay for the Goods then (without prejudice to any other rights) the Company may (as it deems appropriate in the circumstances):-
 - (a) claim interest at a rate and in accordance with Condition 4.2 above and damages with interest thereon;
 - (b) recover the Goods at the Purchaser's expense; and/or
 - (c) demand and receive payment in respect of the Goods already supplied.
- 4.7. As and when any of the termination events specified in Condition 10 occur, payment of the price for any Goods in respect of which payment has not been made shall become immediately due (despite any credit period allowed by the Company) and the Purchaser shall cease to have any right to use, sell or otherwise dispose of these Goods unless and until it has paid for them in full.

5. REPRESENTATIONS

Whilst the Company makes every precaution in the preparation of its brochures, data sheets, price lists, and other literature, these documents and the particulars in them are for the Purchaser's general guidance only. They shall not constitute representations by the Company and the Company shall not be bound by them.

6. RISK AND RETENTION OF TITLE

- 6.1. Risk in the Goods shall pass to the Purchaser when the goods are delivered to the Purchaser or its agent.
- 6.2. Despite Condition 6.1, title to the Goods will not pass to the Purchaser until the Company has received payment in full of all sums due to it from the Purchaser, whether for those particular Goods or otherwise.
- 6.3. Until title in the Goods passes, the Purchaser shall:
 - (a) hold the Goods as bailee for the Company and take proper care of them
 - (b) store or keep the Goods separately so as to show clearly that they belong to the Company
 - (c) not sell or part with possession of the Goods except for sales in the ordinary course of the Purchasers business
 - (d) comply fully with all storage safety and/or environmental requirements applicable to or marked on the Goods specified by the Company and/or required by law
 - (e) keep the Goods free from any mortgage, charge, lien or other encumbrance
 - (f) not remove, alter, obscure, or otherwise interfere with any identifying marks, label, or storage instructions placed on the Goods or their packaging by the Company.
- 6.4. Before title has passed to the Purchaser and without prejudice to any of its other rights, the Company may repossess and/or sell the Goods or any at them at any time and the Company's employee or agents may enter upon any or all of the Purchasers premises or vehicles for that purpose, with or without vehicles. This right and licence shall continue after and despite the termination for any reason of any contract and is without prejudice to any accrued right of the Company under such contract.
- 6.5. Until title in the Goods passes to the Purchaser, the Purchaser shall so long as the Goods are in the Purchaser's possession, custody or control:-
 - 6.5.1. keep the Goods (and all goods, equipment and other items together with which the Goods are stored) insured at the Purchaser's expense with an insurer of good repute against all insurable risks including (but not limited to) loss or damage by fire or theft for an amount not less than the total of:-
 - (a) the Company's list price (which may vary from time to time) of the Goods: and
 - (b) the cost or current market value of other goods, equipment and other items with which the Goods are stored
 - 6.5.2. promptly on the Company's request send to the Company a total of all the relevant policies of insurance and proof of payment at all premiums due in respect of them;
 - 6.5.3. in the event of a claim, pay to the Company immediately on receipt of the proceeds of the claim, such proportion as relates to the Goods; and
 - 6.5.4. keep the Company fully indemnified in respect of any loss or damage to or deterioration of any of the Goods.

7. DELIVERY ARRANGEMENTS

- 7.1. Delivery dates are approximate only and, whilst the Company will use all reasonable endeavours to meet such dates, the Company will not accept responsibility or liability if any delivery dates are not met.
- 7.2. The Company may, without prejudice to any rights it may otherwise have in respect of undespached Goods:
 - (a) deliver any portion of the Goods ordered: and
 - (b) invoice the Purchaser separately for each such delivery
- 7.3. The Company shall have no liability to the Purchaser for any claim for short delivery or loss or damage upon delivery unless it is notified to the Company within 7 days of delivery.
- 7.4. The Company shall have no liability, to the Purchaser for claim for non-delivery unless it is notified by the Purchaser in writing to the Company within 10 days of the date of the invoice in respect of the Goods
- 7.5. If the Purchaser does not by the agreed date for delivery give all instructions reasonably required by the Company, or otherwise causes or requests delay in delivery, the Purchaser shall pay to the Company all storage and other charges incurred by the Company arising from such delay immediately on demand
- 7.6. If delivery of Goods is to a mutually agreed written schedule, each instalment shall be deemed to be a separate sale and the default of the Company in respect of any one or more instalments shall not entitle the Purchaser to repudiate the contract with regard to all or other instalments.

- 8 **WARRANTY**
- 8.1 The Company warrants that for a period of 90 days after the date of delivery to the Purchaser (the Warranty Period) the Goods are substantially free from defects in materials and workmanship.
- 8.2 In the event of breach of this warranty, the Company's sole obligation shall be to repair or replace any defective Goods, free of charge.
- 8.3 Warranty claims must be made in writing to the Company during the Warranty Period within seven days of the first observation of the defect, accompanied by evidence satisfactory to the Company. The Purchaser may return the defective Goods to the Company at the Purchaser's expense.
- 8.4 No representation or warranty is given by the Company as to the suitability or fitness of the Goods for any purpose.
- 9 **SOFTWARE**
- 9.1 The Software is supplied on and subject to the conditions of the Licence.
- 9.2 By opening the Goods, the Purchaser shall be deemed to have read and be bound by the conditions of the Licence.
- 9.3 If the Purchaser does not wish to be bound by the conditions of the Licence, the Purchaser may return the Goods unopened at its expense, to the Company at the address overleaf. After the Company receives them it shall refund to the Purchaser the price of the Goods returned, providing that the wrapper is still intact and clearly the package is unopened.
- 10 **TERMINATION**
- 10.1 If:-
- (a) the Purchaser defaults or commits any breach of any of its obligations to the Company, or ceases or threatens to cease to carry on its business or a substantial part of it;
 - (b) any distress or is levied on any of the Purchaser's property;
 - (c) in respect of the Purchaser (being an individual) an application is made under section VIII of the insolvency act, or if the Purchaser otherwise makes or offers to make any arrangement or composition with its creditors, or a bankruptcy petition is presented to the court;
 - (d) in respect of the Purchaser (being a company) a proposal is made under Part 1 of the Act, or any resolution or petition to wind up the Purchaser is passed or presented, or a receiver or administrative receiver is appointed over the Purchaser's undertaking, property or assets or any material part of them, or a petition is presented to the court for an administrative order;
 - (e) the Purchaser takes or suffers any similar or analogous action due to debt in any relevant jurisdiction, or commits a breach of any contract made under these conditions the Company may (without prejudice to any of its other rights) suspend further deliveries to the Purchaser and/or (by notice in writing to the Purchaser) terminate any contract with the Purchaser.
- 10.2 Upon termination of any contracts pursuant to Condition 10.1, any indebtedness of the Purchaser to the Company shall become due and payable immediately and the Company shall be relieved of any further obligation to supply any Goods to the Purchaser under such contracts.
11. **LIABILITY OF THE COMPANY**
- 11.1 Nothing in these conditions shall exclude or restrict the Company's liability for death or personal injury resulting from its negligence.
- 11.2 The purchaser acknowledges that the price of the Goods would be higher were the following exclusions not agreed.
- 11.3 Subject to Clause 11.1
- 11.3.1 Except as expressly provided in these Conditions, the Company shall not be liable to the Purchaser for any loss of profit, loss of money paid to third parties, loss of contracts, or any other indirect loss or damage, whether caused by the negligence of the Company, its employees or agents or otherwise; and
 - 11.3.2 Where liability is accepted by the Company under these Conditions the Company's only obligation shall be, at its option, to replace or repair any Goods found to be damaged or defective and/or to refund the cost of such Goods to the Purchaser.
12. **FORCE MAJEURE**
- 12.1 The performance of all contracts is subject to variation or cancellation by the Company owing to:
- 12.1.1 any Act of God, war, strike, fire, flood, drought, tempest or any other cause beyond the control of the Company; or
 - 12.1.2 any inability by the Company to procure materials or articles required for the performance of the contract.
- 12.2 The Company shall not be liable for any inability to deliver or to perform its obligations caused by any such event.
13. **INTELLECTUAL PROPERTY AND THIRD PARTY RIGHTS**
- 13.1 The Company shall indemnify the Purchaser for any loss, damage, demand, claim, cost and/or expense suffered or incurred by the Purchaser as a direct result of claim for any infringement or alleged infringement of any intellectual property right or any third party (whether in the United Kingdom or elsewhere) resulting from the authorised conventional and expected use of the Goods, provided that the Purchaser:
- 13.1.1 gives prompt notice in writing to the Company or any such third party claim and giving full details of it
 - 13.1.2 makes no admission of liability without the Company's consent; and
 - 13.1.3 allows the Company, if so required, to have sole conduct and control of the defence of any such claim (at the Company's own expense) and the Purchaser shall give the Company all assistance reasonably required in connection therein.
- 13.2 All intellectual property rights in the Goods shall remain the property of the Company
14. **NOTICES**
- Except as expressly stated otherwise in these Conditions, any notice required to be given under these Conditions shall be in writing in English and shall be given by:-
- 14.1 delivering it personally to the relevant party; or
 - 14.2 sending it by prepaid first class post (or by airmail if sent abroad to the last known address to the relevant party); or
 - 14.3 sending it by facsimile transmission to the facsimile numbers which may from time to time be notified by either party in writing to the other in accordance with these Conditions providing that any party sending a notice or other communication by facsimile shall send a confirmatory copy by prepaid first class post to the relevant party on the same day as it sends the facsimile.
15. **MISCELLANEOUS**
- 15.1 The Company may alter the Goods from time to time at its discretion. No representation or warranty is given that the Goods are, or will be, identical to goods that may have been sold previously to the Purchaser
- 15.2 Nothing in these Conditions shall constitute or create the relationship of principal and agent, employer and employee or of a partnership between the parties. Neither party shall have the authority to bind the other for any purpose.
- 15.3 Each of these Conditions is to be constituted as independent of every other such provision, so that if any of these Conditions is determined to be illegal, invalid and/or unenforceable, that determination will not affect any other of these Conditions, all of which will remain in full force and effect.
- 15.4 A waiver by either of the parties of any breach of any of these Conditions shall not prejudice that party's right in respect of that breach or be deemed to be a waiver or a subsequent breach or that or any other Condition. No delay or omission by either party in exercising any rights in respect of a breach by the other party shall prejudice its rights as to that or any future breach and no single or partial exercise of any right or remedy under these Conditions shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.
- 15.5 These Conditions shall be governed by and construed in accordance with English law. The English courts shall have exclusive jurisdiction in relation to any claim or difference, which may arise under these Conditions.