

EBTI Limited – Standard Terms and Conditions of Sale

1 Definitions

- 1.1 “**Buyer**” means the immediate purchaser of Products and Services from the Seller;
- 1.2 “**Hardware**” means any item described as such in the Quotation;
- 1.3 “**Initial Assessment**” means the information gathered during the initial assessment by the Seller in order to determine what Products and Services are required by the Buyer;
- 1.4 “**Installation Charges**” means the fees set out in the Quotation;
- 1.5 “**Location**” means the location designated in the relevant Quotation where the Products are to be installed or Services performed;
- 1.6 “**Products**” means the Hardware and Software detailed in the Quotation to this Agreement;
- 1.7 “**Seller**” means EBTI Limited (Registered No. 06360973) whose registered office is at 83 Tomkinson Drive, Kidderminster DY11 6NP.
- 1.8 “**Services**” means all of the consultancy services detailed in the Quotation to this Agreement;
- 1.9 “**Quotation**” means the document detailing description of the Products and Services to be provided to the Buyer;
- 1.10 “**User Documentation**” means the documentation supplied by the Seller or the Seller’s suppliers which are associated with the use of the Products or Services as may be modified in writing by the Seller periodically.

2 Basis of Contract

- 2.1 Subject to any variation under Condition 2.2 the Agreement will be subject to these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document whatsoever and whenever).
- 2.2 Any variation to these Conditions and any representations about the Products or Services shall have no effect unless expressly agreed in writing and executed by the Seller.
- 2.3 Any orders for Products and Services are subject to confirmation of acceptance in writing by the Seller and are deemed to be made subject to these terms and conditions of sale and no qualification or term or condition in any offer or purported acceptance by the Buyer shall form any term or condition. A binding agreement shall not arise unless the Seller shall have given written confirmation of acceptance of the Buyer’s order.

3 Prices and Payment

- 3.1 The price for Products and Services and any relevant installation charges will be stated in the Quotation. Unless otherwise indicated all prices exclude Value Added and any other sales taxes. Payment of all sums due under this Agreement shall be made in accordance with the payment terms detailed in the Quotation. All sums due under this Agreement shall be paid in pounds sterling and within 30 days from the date of the invoice, unless otherwise specified in the Quotation.
- 3.2 Without prejudice to the Seller’s other rights the Seller reserves the right to charge interest on any overdue amounts payable by the Buyer to the Seller at a rate of 5% per annum above Cheltenham and Gloucester plc standard variable rate from time to time. Interest shall be chargeable from the date of the Seller’s valid invoice and becomes payable until (in accordance with Clause 3.2 above) the date the Seller receives payment from the Buyer in full.
- 3.3 For the avoidance of doubt, the Buyer will pay the Seller in accordance with this Clause 3 irrespective of whether or not the Buyer is paid by any third party users of the Products and Services or any third party suppliers.

4 Delivery and Installation

- 4.1 The Buyer agrees to prepare the Location for the installation of the Products or performance of the Services in accordance with the Seller’s written instructions prior to delivery (unless the Seller has agreed in the Quotation to undertake such preparation as part of the Services).
- 4.2 The Seller will deliver the Products to or perform the Services at the Location in accordance with any date or dates stated in the Quotation, but unless the Quotation expressly states otherwise, such date or dates shall constitute estimates only, shall not be binding and the Seller shall not be liable for any delay in delivery. The Seller will, however, use reasonable endeavours to notify the Buyer of any delay as far in advance as reasonably possible.
- 4.3 Where the Seller agrees at the Buyer’s request to expedited delivery and this necessitates overtime or other additional costs, the Buyer will reimburse the Seller for the amount of such overtime payment or other costs. Where the Seller agrees to postpone delivery the Buyer agrees (at the Seller’s reasonable discretion) to pay all costs and expenses the Seller reasonably incurs resulting from such postponement.
- 4.4 If the delivery of Products or the performance of Services is suspended at the Buyer’s request or delayed through the Buyer’s default (including but not limited to the Buyer delaying in providing confirmation of instructions to proceed with the order) the Seller will be entitled to payment at the prevailing rates for Services already performed and Products supplied or ordered and any other additional costs the Seller thereby reasonably incurs.

5 Title

- 5.1 Title to each item of Hardware shall pass to the Buyer when payment is received by the Seller in full.
- 5.2 Title to the programs comprised within the Software shall not pass to the Buyer but shall at all times remain the property of the Seller or the relevant third party proprietor as applicable.

6 Licence Grant

- 6.1 The Seller grants to the Buyer a non-exclusive, non-transferrable single user licence to use the Software and the User Documentation. Third party Software is licensed subject to the applicable licensing terms of the third party proprietor.

7 Intellectual Property

- 7.1 The Buyer acknowledges that the Seller retains all copyright and other intellectual property rights in respect of the Products supplied by the Seller and any drawings, plans, designs, inventions, computer programs, blueprints, circuits, diagrams, models or memoranda produced by the Seller for the Buyer in respect of the supply of such Products.

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7.2 The Buyer acknowledges that any intellectual property rights in any third party software provided as part of the Products or Services shall remain vested in the Seller's suppliers.

8 Warranties

8.1 The Seller warrants:

- (a) it has the right to market the Products and licence the Software;
- (b) the Software to be supplied pursuant to this Agreement will substantially comply with the relevant Software Product description and/or User Documentation;
- (c) it will assign to the Buyer the benefit of any warranty given to it by the Supplier of third party products. Unless otherwise detailed in the Quotation the warranty period for each item of third party products shall commence on the date of delivery of that item to the Location.

8.2 In the event that the Products do not perform as warranted in Clauses 8.1 (b) to 8.1 (c) above the Seller's sole obligation shall be to correct any non-compliance therein notified by the Buyer to the Seller in writing within 90 days from the delivery date. For the avoidance of doubt, this is in relation to products produced by the Seller.

8.3 Clause 8.2 shall not apply unless the Buyer:

- (a) notifies the Seller in writing of alleged defect within 7 days of the time when the Buyer discovers or ought to have discovered the defect and in any event within 12 months of the delivery of the Product or 3 months of performance of Services to the Buyer or such other periods as agreed by the Seller in writing; and
- (b) affords the Seller a reasonable opportunity to inspect the relevant Products at the location at which the Services were performed and, if so requested by the Seller and where it is reasonable to do so, promptly returns to the Seller or such other person nominated by the Seller a sample of the products or materials at the Customer's premises or other location where they may be or the Services were performed for such purposes.

8.4 If the Seller elects to replace the Products or re-perform the Services pursuant to Condition 8.1, the Seller shall deliver the replacement Products or re-perform the Services for the Buyer at the Seller's own expense at the address to which the defective Products were delivered and the legal, equitable and beneficial title to the defective Products which are being replaced shall (if they have vested in the Customer) re-vest in the Seller and the Buyer shall make any arrangements as may be necessary to deliver up to the Seller the defective Products which are being replaced or materials relating to the previously performed Services to the Seller.

8.5 The Seller shall be under no liability under the warranty at Condition 8.1 above:

- (a) in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Products without the Company's approval;
- (b) if the total price for the Products or Services has not been paid by the due date for payment;
- (c) in respect of any type of defect, damage or wear specifically excluded by the Seller by notice in writing; or
- (d) if the Buyer makes any further use of the Products after giving notice in accordance with Clause 8.2.

8.6 Subject to clause 10.2, the Seller excludes all liability for Products or Services which may lead to the deterioration of the health of the End User.

8.7 The Seller gives no further warranties or representations, save as expressly set out in Clause 8.1 above, as to the fitness of the Products or Services for any purpose or as to their performance. The express warranties in Clause 8.1 above are given to the exclusion of all other warranties and conditions whether express or implied, statutory or otherwise. No representation or statement not expressly set out in this Agreement or any Quotation shall be binding upon the Seller whether as a warranty or otherwise.

9 Consultancy Services

9.1 In the event that consultancy services are specified in the Quotation, the additional terms and conditions specified in this Clause 9 shall apply.

9.2 The Seller agrees to:

- (a) (unless enhanced arrangements are specified in the Quotation) make available the levels of personnel specified in the Quotation to perform the consultancy services during normal business hours which are as follows:
9.00am to 5.00pm Monday to Friday
- (b) nominate prior to the provision of the consultancy services a responsible representative to be the Seller's prime point of contact with the Buyer during performance of the consultancy services.

9.3 The Buyer agrees to:

- (a) promptly supply the Seller with such information as the Seller may reasonably require to perform the consultancy services (taking reasonable steps to ensure its validity and accuracy in all cases);
- (b) nominate prior to the provision of the consultancy services a responsible representative to be the Buyer's prime point of contact with us during performance of the consultancy services;
- (c) sign a consultancy services report to signify that the Buyer has satisfactorily received the services (such signature not to be unreasonably withheld).

10 Liability

10.1 The Seller's entire liability to the Buyer and the Buyer's exclusive remedy against the Seller for any "Default" shall be set out in this Clause 10. Such liability shall be limited to the following:

- (a) the remedies set out in clause 8 for a breach of warranty;
- (b) a maximum of the full contract value as specified in the Quotation for direct physical damage to tangible property for direct physical damage to property (but excluding data) and for any indemnity resulting from advice given by the Seller and acted on by the Buyer.

10.2 The Seller does not limit its liability in respect of death, personal injury and fraudulent misrepresentation.

10.3 Notwithstanding any other provision of this Agreement, and irrespective of any fault or negligence, neither party to this Agreement shall be liable to the other for any indirect, incidental, consequential, reliance, liquidated or special damage (including, without limitation,

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damages for harm to business, lost revenues, lost savings, or lost profits), regardless of the form of action, whether in contract, warranty, or tort, including without limitation, negligence of any kind whether active or passive.

10.4 The Buyer will afford the Seller a reasonable opportunity to correct any deficiency in any Product or the Services (including at the Seller's option the substitution or addition of Products) or other Default before the Buyer deems the Seller to be in breach of its obligations under this Agreement.

11 Cancellation

11.1 The Buyer shall have no right under any circumstances to cancel the Agreement in whole or in part without the prior written consent of the Seller which consent shall be conditional upon payment of such compensation as the Sellers shall reasonably require in the circumstances.

11.2 If an appointment is cancelled by the Buyer or the End User within seven working days of the date agreed with the Buyer, then a cancellation fee will be payable by the Buyer.

11.3 Where the Quotation proposes a phased development, Phase 1 may not be cancelled once the deposit has been paid.

11.4 Subsequent Phases may be cancelled but development work already carried out is non-refundable and must be paid in full. A cancellation fee of 50% of the outstanding balance will be charged.

11.5 Notice of intention to cancel an order for Products or Services must be made in writing. Any work carried out before notice to terminate is received must be paid in full.

12 Force Majeure

12.1 Neither party shall be held responsible for any delay or failure in performance pursuant to this Agreement including any Quotation to the extent such delay or failure is caused by: fire, flood, explosion, war, strike, embargo, labour dispute, government requirement, civil or military authority, nature or the public enemy, inability to secure materials, transportation facilities or circuits from telecommunications suppliers, act or omission of carriers or suppliers, acts of failure to act of any governmental authority, including without limitation, the failure or refusal by any foreign government authority, if required, to grant an export license, or any other causes beyond its reasonable control. Each party shall endeavour to give the other reasonable notice of any such delay.

13 General

Miscellaneous Provisions

13.1 Neither party shall publish or use any advertising, sales promotion, press release, or other publicity matters which use the other party's name, logo, trademarks, or service marks without the prior written approval of the other party.

13.2 The waiver by either party of any breach of this Agreement by the other party in a particular instance shall not operate a waiver of subsequent breaches of the same or a different kind. The failure of either party to exercise any rights under this Agreement in a particular instance shall not operate as a waiver of that party's right to exercise the same or different rights in subsequent instances.

13.3 If any provision of this Agreement shall be held to be invalid or unenforceable, it shall be severed from this Agreement, and the remainder of this Agreement shall remain in full force and effect. However, if the provision is essential the Parties shall promptly negotiate a replacement.

13.4 All headings used in this Agreement are for ease of reference only and shall not affect its construction or interpretation.

13.5 This Agreement nor any of the rights granted on it may not be assigned by the Buyer without the written consent of the Seller, the Seller may, without the Buyer's consent assign this Agreement to any other company owned or controlled by the Seller, or subcontract any of the Seller's rights or obligations under this Agreement. The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no third party shall have the benefit or the right to enforce any term of this Agreement.

13.6 Unless otherwise agreed in writing, the Buyer will not set-off any monies due to the Seller under any Quotation to this Agreement against any amount claimed by or due to the Buyer from the Seller under any other Quotation to this Agreement or any other agreement with the Buyer.

13.7 Any notice, demand or other written communication required or permitted shall be deemed to have been validly given if served personally or sent by first class pre-paid post to the registered office or principal place of business or abode of the relevant party. Any such notice, demand or other communication shall be deemed conclusively to have been served three days after the time of posting where sent by post or at the time of delivery by hand.

Entire Agreement

13.8 This is the entire Agreement between the Buyer and the Seller with respect to Products and Services and supersedes all prior Agreements, proposals, representations, statements, or understandings, whether written or oral, concerning the same. Any terms or conditions purportedly imposed by any purchase order, or other document used to order Products or Services, or any correspondence between the parties shall be void and of no effect. Neither the Seller's commencement of performance or delivery of Products or Services shall be deemed or construed as acceptance of any terms or conditions purportedly contained in such documents.

13.9 A change, modification or waiver of any of the terms or conditions of this Agreement shall only be binding if it is made in writing by incorporation in a formal Quotation to the Agreement and duly signed by authorised representatives of both parties and any purported change, modification or waiver contained in any other document designated by the Seller as a Quotation pursuant to the definition thereof appearing on the first page of this Agreement shall be void and of no effect.

Law

13.10 Any dispute or difference arising between the parties out of or in connection with this Agreement shall be governed by English Law. The parties submit to the exclusive jurisdiction of the English Courts.