

TERMS AND CONDITIONS

1. DEFINITIONS

- 1.1 "Elite" means Elite Interfaces Limited of 24B Portman Road, Reading, Berkshire RG30 1EA, United Kingdom (registered in England and Wales, company number 03184936) or any subsidiary or associated Company.
- 1.2 "Customer" means the party identified as the Customer.
- 1.3 "Order" means the order for supply of the Products as defined in the relevant quotation at the prices and on the terms and conditions set forth in this Agreement.
- 1.4 "Products" means the computer hardware, fixturing and software items listed on the relevant quotation.
- 1.5 "Agreement" means the agreement entered into by the Elite and the customer when a customer purchase order is provided against a relevant Elite quotation.
- 1.6 "Installation Site" means the location identified on the front of this Agreement at which the Products will be installed.
- 1.7 "Third Party Software" means all software owned by or licensed to the Customer from a third party owner (whether or not supplied by Elite) and which comprises part of the Products.

2. CONTRACT

- 2.1 The Customer's order for supply of the Products shall constitute an offer to Elite. Only when Elite has accepted the Order by means of an acknowledgement by a Director or employee of Elite will a contract between Elite and the Customer come into being in relation to the Products ordered.
- 2.2 This Agreement including any Quotation and Exhibits hereof constitutes the entire agreement between the parties superseding any previous agreements for this purpose whether written or oral. Each party warrants to the other that it has not relied upon representation not recorded herein which has induced it to enter into this Agreement. No amendment of these terms and conditions will be valid unless confirmed in writing by both parties signed by an authorised signatory of both Elite and the Customer.
- 2.3 Clause headings are for convenience only and shall not affect the construction or interpretation of the terms and conditions of this Agreement.
- 2.4 No failure, delay, relaxation or indulgence on the part or either party in exercising any power or right conferred upon such party in this Agreement shall operate as a waiver of such power or right, nor shall any single or partial exercise of any such power or right preclude any or further exercise thereof or the exercise of any other power or right under this Agreement.
- 2.5 This Agreement is not transferable or assignable by either party without the prior written consent of the other party.
- 2.6 In the event of these terms and conditions being judged illegal or unenforceable for any reason, the continuation in full force and effect of the remainder of the terms and conditions of this Agreement shall not be prejudiced.
- 2.7 Neither party shall be liable to the other for any delay in or failure to perform its contractual obligations (other than payment of money) where such delay or failure is due to causes outside its reasonable control.
- 2.8 Any notice to be given under this Agreement by either party to the other must be in writing and may be effected by personal delivery, or recorded delivery post, and in the case of post shall be deemed to have been received 2 working days after the date of posting. Notices sent by post shall be sent to the addresses of the parties set out herein or to any or to any other address notified by one party to the other for the purpose of receiving notices after the date of this Agreement.

3. SITE PREPARATION, DELIVERY AND INSTALLATION

- 3.1 The Customer shall prepare the Installation Site, including the desired operating location, at its expense in accordance with Elite's written site specification 7 days prior to the scheduled delivery date.
- 3.2 The Customer shall ensure compliance with the local laws and shall obtain any permits required for installation and use of the Products.
- 3.3 The Customer shall pay all charges in transporting the Products to the Installation Site including insurance.
- 3.4 Elite shall make reasonable efforts to adhere to the delivery schedule agreed with the Customer, but time shall be treated as a matter of guidance and not of the essence. In no event shall Elite be liable for any damages from any delay in delivery to the customer.

4 CUSTOMER RESPONSIBILITIES

- 4.1 The Customer shall be entitled to the use of the Products for its own purposes, and shall not provide the Products for use by any other party unless such use is part of the normal business practice of the Customer.
- 4.2 The Customer shall make the products available as required to enable Elite or its appointed agent to carry out any necessary preventative maintenance.
- 4.3 The Customer shall provide for any operating supplies necessary which are compatible for use with the Product, and shall not use on or with the Products any stationery, magnetic media or other consumables which do not meet the specifications of Elite and/or the original manufacturer or which are defective.
- 4.4 The Customer shall take care of the Products, shall house them in suitable premises and under suitable conditions, and shall follow such instructions on these matters and on operating the Products as Elite shall give from time to time.

5. SUBSTITUTION AND MODIFICATION

Elite reserves the right to make improvements, substitutions and modifications in the specification of any of the Products, provided that such improvements, substitutions or modifications will not materially affect the performance of the Products to the Customer's detriment.

6. PRICES, EXPENSES AND SPECIAL CHARGES

- 6.1 Prices chargeable by Elite pursuant to this Agreement are exclusive of expenses reasonably incurred as a result of additional requirements or expectations of the Customers not reasonably anticipated by the parties at the commencement of this Agreement. Such expenses shall include additional travel to and from the installation site.
- 6.2 All expenses and special charges shall be invoiced as and when they arise unless otherwise agreed with Elite and subject to the payment terms in Clause 12 below.
- 6.3 Unless otherwise stated in writing by Elite, all prices, expenses and charges are exclusive of Value Added Tax and any similar taxes and are also exclusive of any duties payable where Products are delivered outside the United Kingdom. All such taxes and duties are payable by the Customer and, when applicable, will appear as separate items on Elite's invoice.

7. PAYMENT TERMS

7.1 Subject to any specific payment terms highlighted in Elite's relevant quotation, all invoices properly rendered under the terms of this Agreement for Products or expenses will be payable by the customer 30 days from the invoice date.

7.2 Payments which are not received when payable will be considered overdue and remain payable by the customer together with interest for late payment at the rate of 4% per annum above the base rate from time to time of the Barclays Bank PLC from the due date therefore until payment as well after any judgment as before.

7.3 Notwithstanding the above provision for late payment, in such event Elite may, at its option and without prejudice to any other remedy at any time after payment has become due, terminate or temporarily suspend this Agreement.

8. OWNERSHIP

8.1 Products shall remain the property of Elite until fully paid. The Customer shall not do or permit or cause any act to be done whereby the rights of Elite in respect of the Products are prejudicially affected.

9. PROPRIETARY RIGHTS IN SOFTWARE PRODUCTS

9.1 The Customer hereby acknowledges that any and all proprietary rights in any software Products or Third Party Software supplied hereunder including but not limited to any title or ownership rights, patent rights, copyrights and trade secrets rights, shall at all times and for all purposes vest and remain vested in Elite or the third party owner as the case may be.

9.2 No title or ownership of the software Products or any Third Party Software licensed to the Customer under this Agreement is transferred to the Customer under any circumstances.

9.3 The Customer is granted and hereby accepts a non-transferable (without the prior written consent of Elite) and non-exclusive licence (hereinafter called "License") to use the software comprised in the Products subject to the following terms and conditions.

(a) The License shall subsist until notice of termination is given by either party hereunder except that Elite shall not be entitled to terminate the License unless the Customer fails to remedy any non-compliance with the terms of the License within 28 days of notice from Elite requiring it to do so.

(b) The said software and any part thereof may be used only on the computer system for which it was supplied and may only be copied in whole or in part, for use on such system with the proper inclusion of Elite's copyright and proprietary notices on the software, and except for archive purposes, to replace a defective copy or for program error identification by the Customer, and may not be copied for any other purpose. (c) The Customer shall not provide or otherwise make available the said software or any part of copies thereof or any related documentation in any form to any third party (except the Customers employees or agents directly concerned with the Customers licensed use of the software).

(d) This License is not transferable or assignable without the prior written consent of Elite, consistent with 2.5 above.

(e) On termination of this License, the Customer agrees to return immediately the said software and related documentation then in its possession together with all portions and copies thereof and to execute an affidavit certifying that all such software and documentation has been returned.

9.4 The Customer further agrees to comply with any additional Third Party Software conditions notified to it on or before delivery

of any Third Party Software (including if so required the execution and return of a Third Party Software License) and to indemnify Elite in respect of any costs, charges or expenses incurred by Elite at the suit of a Third Party Software owner as a result of any breach by the Customer of such conditions.

10. INDEMNITIES AND LIMITS OF LIABILITIES

10.1 There are no warranties, conditions, guarantees or representations whether express or implied by statute or otherwise, orally or in writing, except as expressly provided in this Agreement. In the event that Customer exercises its option to purchase Products Elite will endeavour to assign the benefit of any available manufacturers warranties then remaining on such Products supplied hereunder other than warranties of good title to hardware Products and of due authorisations to licence software Products.

10.2 Nothing in this Agreement excludes the Seller's liability for death or personal injury caused by the Seller's negligence, or for fraud or fraudulent misrepresentation.

10.3 Elite will indemnify the Customer for direct damage to property arising out of its performance of its obligations under this Agreement and solely attributable to the negligence of its assigned employees or representatives acting within the course of their employment and the scope of their authority. Elite's total liability under this sub-clause including all costs damages and expenses shall be limited to the invoice value of the goods and services.

10.4 Elite will not be liable in any way for any losses caused by the Customers failure to perform its obligations hereunder including but not limited to any failure of the Customer to make adequate provision for recovery of lost or corrupted data, files or programs and the representatives in respect of any claims by third parties which are occasioned by or arise from any Elite performance or non-performance pursuant to the instructions of the Customer or its Authorised Representatives.

10.5 EXCEPT AS OTHERWISE STATED IN THIS CLAUSE 10, ELITE SHALL NOT BE LIABLE IN ANY EVENT FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSSES OR EXPENSES INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR ARISING FROM LOSS OF DATA FROM OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE PRODUCTS PROVIDED HEREUNDER.

11. PATENTS AND COPYRIGHT

11.1 Elite shall defend or cause to be defended any claim or action brought against the Customer claiming that the Customers use of a Product infringes a United Kingdom patent or copyright, and shall pay the costs and damages awarded in such action provided that the Customer shall have promptly notified Elite in writing of any such claim or action and that Elite shall have sole control of the defence and all negotiations for its settlement.

11.2 In the event that a final injunction shall be obtained against the Customers use of such Product by reason of such infringement, Elite shall at its option and expense:

(a) procure for the Customer the right to continue using the products, or

(b) replace or procure the modification of the Product so that it is no longer in infringement, or

(c) grant the Customer a pro-rata refund of any amounts already paid in advance for future use of the Product upon its return.



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11.3 Elite shall not be liable to the Customer for any infringement of patent or claim where it relates to:

- (a) use of the Products in combination with other equipment or devices not supplied by Elite, or use of the Products for a purpose for which the Products have not been supplied by Elite, of which Elite has not been notified and for which Elite has not given prior written approval, or
- (b) furnishing the Customer with any information, data, service, or application assistance. This Clause 15 states Elite's entire liability to the Customer arising from patent infringement.

12. TERMINATION

12.1 If the Customer fails to perform its obligations under this Agreement, including but not limited to breach of Clause 4 relating to the use and care of the Products, and such failure continues for a period of 7 days after notice thereof, then without prejudice to any other rights or remedies available to it, Elite shall have the right to terminate this Agreement forthwith.

12.2 If either party is involved in any legal proceedings concerning its solvency, or ceases or threatens to cease trading, or commits an act of bankruptcy or its adjudicated bankrupt or enters into liquidation, whether compulsory or voluntary, other than for the purpose of an amalgamation or reconstruction, or makes an arrangement with its creditors or petitioner for an administration order or has a Receiver or Manager appointed over all or any part of its assets or generally becomes unable to pay its debts as they fall due or there are other reasonable grounds for suspecting that the party is in financial difficulty, then without prejudice to any other rights or remedies available to it the other party shall have the right to terminate this Agreement forthwith and, without prejudice to other rights or remedies available to it, shall have the right to the return of its Products or other materials in the possession of the defaulting party. Elite shall further have the right to enter into the Installation Site in order to effect recovery of the Products and materials remaining in possession of the Customer.

12.3 In the event of termination or expiry of this Agreement for any reason, the Customer shall deliver forthwith to Elite the Products in as good a condition as at the date of delivery (reasonable wear and tear excepted).

13. LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees to submit to the exclusive jurisdiction of the courts of England and Wales in relation to any claim or matter arising under or in connection with this Agreement.