

STANDARD TERMS AND CONDITIONS OF SALE

1. INTERPRETATION AND APPLICABILITY

1.1 In these terms and conditions, unless the context otherwise requires:-

- "Service Direct" means Service Direct (UK) Plc (Registered Number 3798291) and/or as the context requires any of its group companies, subsidiaries, subsidiary undertakings or trading divisions from time to time.
- "Service Direct Group" means Service Direct (UK) Plc and its holding company and their subsidiaries and subsidiary undertakings from time to time (as defined by the Companies Act 1985).
- "Order Form" means Service Direct's Sales Order Form and any amendments or additions to it agreed by the parties.
- "Contract" means any agreement between Service Direct and the Customer for the supply of Products, which expressly or by implication incorporates these, terms and conditions.
- "Customer" means the Customer named in the Order Form.
- "Delivery Address" means the address as the point of delivery as notified by Service Direct to the Customer.
- "Delivery Date" means the date by which Service Direct is to deliver the Products to the Customer.
- "Hardware" means the hardware or hardware components of Service Direct's products including all ancillary equipment, accessories, spares, supplies and related documentation.
- "Licence Agreement" means the terms and conditions governing the supply of software, whether Service Direct's own software or third party software which Service Direct is authorised to supply to the Customer.
- "Price" means the total price and/or annual charges for the products as specified in the Order Form or as otherwise specified by Service Direct subject as provided in these terms and conditions.
- "Products" means Service Direct's products including but not limited to any installation or configuration of Hardware and/or Software. All services offered by Service Direct, including maintenance and support, training and education, and consultancy services are not Products to which these terms and conditions apply, but are supplied on the terms and conditions contained in Service Direct's applicable agreement(s).
- "Software" means any operating system, utility or applications software delivered by Service Direct which shall be in machine readable object form, and either incorporated within Hardware or separately supplied, including related documentation.
- 1.2 Reference to a party to this Agreement shall include its successors in title and permitted assigns.
- 1.3 Words denoting the singular include the plural and vice versa, words denoting any one gender include all genders, and references to persons include individuals, partnerships, bodies corporate and unincorporated associations;
- 1.4 The words "including" and "in particular" shall not limit the generality of any preceding words or be construed as being limited to the same class as the preceding words where a wider construction is possible.
- 1.5 The Order Form if any is part of this Agreement and in the event of conflict between (i) these terms and conditions and (ii) the Order Form, the latter shall prevail.
- 1.6 Expressions used in these terms and conditions shall have the meanings set out in the Order Form.
- 1.7 If these terms and conditions are incorporated by reference into any other form of agreement between Service Direct and the Customer and that other agreement is currently in effect at the time the Contract is made, so that the Contract constitutes a contract for the purposes of that agreement, the terms and conditions of that agreement will prevail in the event, but only to the extent, of any conflict of meaning between that agreement and these terms and conditions.
- 1.8 Service Direct's catalogues and other price lists shall not form part of any contract between Service Direct and the Customer.
- 1.9 In the event of the Customer's orders containing provisions inconsistent with these terms and conditions, the latter shall prevail.

2. PRICE AND PAYMENT

- 2.1 While every endeavour will have been made by Service Direct to ensure accuracy of prices quoted no responsibility can be accepted for errors or omissions. Prices are subject to alteration without notice.
- 2.2 Subject to clause 2.1 the Customer will pay Service Direct the Price and other charges published by Service Direct from time to time.
- 2.3 Payment of the Price and any other charges due under the Contract must be made no later than 30 days from the date of an invoice (unless otherwise specified in the invoice). The contents of the invoice, including inter alia the Price and in the absence of a manifest error, be deemed to have been accepted by the Customer unless the Customer has notified Service Direct in writing within 14 days from the date of the invoice that such contents are disputed.
- 2.4 Any sums due to Service Direct from the Customer which are unpaid for more than 30 days after the date of Service Direct's invoice shall (before and after any judgment) bear interest at the rate of the higher of (i) the rate applied by the Late Payment of Commercial Debts (Interest) Act 1998 and (ii) 3% above the base lending rate of Allied Irish Bank Plc (or such clearing bank nominated by Service Direct) from time to time calculated from the date payment was due until the date of actual payment.
- 2.5 VAT where appropriate is payable on the Price and all Sums referred to in the Contract.
- 2.6 The Customer agrees to pay the Price and any other amounts due pursuant to these Consultancy Services without set-off, deduction or counterclaim.
- 2.7 Without prejudice to any of Service Direct's other rights, if the Customer materially breaches these terms and conditions, including but without limitation, by failing to effect any payment due to Service Direct under the Contract in accordance with this clause, or if in Service Direct's judgment the Customer's financial condition gives Service Direct cause for concern, Service Direct may require immediate payment of the Price or Service Direct shall have the right to terminate or suspend the Contract in whole or in part without notice. Following such termination or suspension Service Direct shall be entitled to recover from the Customer all sums owing in respect of the Contract (and in respect of any other contracts under which the Customer has failed to make due payment) including without limitation the Price with any interest charge payable thereon, together with all damages sustained, and all costs (including full legal costs on a solicitor and own client basis), charges, expenses and losses reasonably incurred, as a consequence of such suspension or termination.

3. TITLE

- 3.1 Title to the Products is vested in Service Direct. Only when the Price, all taxes and other charges due under the Contract or other sums due from the Customer to Service Direct have been paid in full, will title to any Hardware supplied under the Contract pass to the Customer.
- 3.2 No title or ownership of any Software supplied under the Contract and licensed to the Customer under any Licence Agreement is transferred to the Customer.
- 3.3 Until such time as title in the Products passes to the Customer, the Customer shall hold the Products as Service Direct's fiduciary agent and bailee, and shall keep the Products separate from those of the Customer and third parties and properly stored, protected and insured and identified as Service Direct's property. Until that time the Customer shall not be entitled to resell the Products.
- 3.4 Until such time as title in the Products passes to the Customer (and provided the Products are still in existence and have not been resold) Service Direct shall be entitled at any time to require the customer to deliver up the Products to Service Direct and if the Customer fails to do so forthwith to enter upon any premises of the Customer or any third party where the Products are stored and repossess the Products.
- 3.5 The Customer shall not be entitled to pledge or in any way charge by way of security or any indebtedness any of the Products which remain the property of Service Direct but if the Customer does so all monies owing by the Customer to Service Direct shall (without prejudice to any other right or remedy of Service Direct) forthwith become due and payable.

4. DELIVERY AND RISK

- 4.1 Delivery will be effected at the Delivery Address.
- 4.2 Appropriate the Customer will make the Delivery Address available for inspection by Company staff at any agreed time during a period of 30 days before the Delivery Date if so required by Service Direct.
- 4.3 If appropriate the Customer will furnish the necessary labour (under Service Direct's direction, if Service Direct so requires) for taking any Hardware supplied under the Contract into its designated operating point, unpacking it and placing it in the desired location.
- 4.4 The Delivery Date is an estimate only. Service Direct shall use reasonable efforts to meet delivery dates but shall not be liable for any loss, damage or inconvenience whatsoever (whether arising directly or indirectly) suffered by the Customer or any other person if for any reason availability is delayed.
- 4.5 Each delivery of Products under the Contract will be deemed to constitute a separate enforceable contract to which these terms and conditions will apply.
- 4.6 If the Customer refuses or fails to take delivery of Products tendered in accordance with the Contract, delivery will nevertheless be deemed to have taken place for the purpose of Service Direct's rights to payment and Service Direct will be entitled to store the products at the Customer's risk and expense, including all transportation charges.
- 4.7 The Customer shall inspect the Products on delivery and shall within 48 hours of delivery notify Service Direct of any alleged shortage in quantity, damage or failure to comply with description or sample. If the Customer fails to notify Service Direct within such time the Products shall be conclusively presumed to be in accordance with the Contract.
- 4.8 If the Products are not in accordance with the Contract, the sole remedy of the Customer shall be limited to Service Direct making good any shortage by replacing such Products or, if Service Direct shall elect, by refunding a proportionate part of the Price.
- 4.9 Risk of loss or damage to the Products shall pass to the Customer on delivery.

5. SUBSTITUTION, CHANGES, CANCELLATION

- 5.1 Service Direct reserves the right to make improvements, substitutions or modifications to any part of the Products at any time prior to delivery, provided that such improvements, substitutions or modifications will not materially affect the performance of such Products.
- 5.2 Service Direct further reserves the right to change the Delivery Date and increase the price of the Products at any time prior to delivery, to reflect any increase in the cost to Service Direct which is due to any factor beyond Service Direct's control.
- 5.3 No order which has been accepted by Service Direct may be cancelled by the Customer except with the prior written consent of Service Direct and the Customer shall indemnify Service Direct in full against all loss (including loss of profit), costs (including the cost of any management time, and labour and materials used) damages, charges and expenses incurred by Service Direct as a result of such cancellation.

6. HARDWARE

- 6.1 Where installation or training is not included in the Price and not ordered by the Customer, the Customer will be solely responsible for this, and Service Direct disclaims all liability in this connection.
- 6.2 Where the Hardware includes data communications equipment and data transmission speeds are given in relation to any item of Hardware, these are at all times subject to any conditions of the applicable telecommunications utility company relating to the use of the relevant modem at the speeds indicated and to the capability of any of that company's equipment to which the Hardware is linked.
- 6.3 Where the Hardware is installed for use in conjunction with other products not supplied by Service Direct, the Customer will be solely responsible for ensuring that the Products are compatible with such other products, and Service Direct disclaims all liability in this connection.
- 6.4 Service Direct warrants that it has good title or the legal right to supply all Products supplied to the Customer. Hardware is warranted in accordance with any manufacturer's warranty supplied and in the event that no such warranty is supplied, the Hardware is warranted against defects in workmanship and materials for a period of 90 days from the date of delivery. The sole obligation of Service Direct under such warranty will be limited to the use of all reasonable efforts to repair or replace, as its option, any component which proves defective during the warranty period provided that (i) Service Direct has been notified within such warranty period of such defect; (ii) Service Direct has issued an appropriate authorisation; and (iii) such defective component has been returned

- to Service Direct, undamaged, complete and identified in accordance with Service Direct's instructions, within 14 days of receipt of such authorisation. Service Direct will only issue an appropriate authorisation in the event that every opportunity has been given to investigate and resolve such defect having reasonably used all its technical resources. All replaced Hardware or parts will become Service Direct's property. The warranty services will be performed at Service Direct's repair facility.
- 6.5 The Customer will be liable for all costs and bear the risks of de-installation and return to Service Direct of any Product under the warranty provisions of Clause 6.4 above. Service Direct will be liable for the costs and bear the risks of re-delivery to the Customer except where Service Direct reasonably determines that the Hardware is not defective within the terms of the warranty, when the Customer will be liable for the costs and risks of re-delivery.
- 6.6 The stated warranties apply only to the Customer and not the initial end user of the Hardware and are contingent upon proper treatment and use of the Products with no unauthorised modifications and maintenance, at a safe and suitable premises.
- 6.7 The supply of Hardware to the Customer does not convey any ownership or licence to exploit any of the proprietary rights of Service Direct in the Hardware. Any such proprietary rights granted to the Customer by Service Direct will be granted only subject to separate restrictive, non-transferable, non-exclusive licence agreement. All operating instructions, manuals and other documents referencing the Hardware and supplied by Service Direct are subject to copyright and shall not be copied or disclosed to any third party without the prior express written consent of Service Direct.

7. SOFTWARE

- 7.1 Service Direct warrants that it has the legal right to licence the Software to the Customer. Copyright subsists in all Software whether it is Service Direct's proprietary software or software supplied by Service Direct under licence. All Software is supplied to the Customer only under the terms and conditions of the applicable Licence Agreement (whether this has been signed and/or returned to Service Direct or not). No part of the Software may be copied, reproduced or utilised in any form by any means without the prior written approval of Service Direct.
- 7.2 It is the sole responsibility of the Customer to comply with all of the terms and conditions of any Licence Agreement, and the Customer is hereby notified that any failure to comply with such terms and conditions may result in the revocation of such Licence Agreement.
- 7.3 Software is warranted in accordance with the terms of any Licence Agreement governing its supply. The Customer's right to use the Software is limited to the number of users stated in the Licence Agreement or as specified in the Order Form. Any such licence shall be a personal, non-exclusive, non-transferable licence.

8. EXCLUSIONS OF LIABILITY

- 8.1 Whilst Service Direct makes every effort to ensure that information supplied in relation to Products is correct, it cannot be held liable in any circumstances for any errors in the information provided, unless the information has been expressly warranted by Service Direct in writing, the Customer having first fully and accurately communicated its requirements to Service Direct.
- 8.2 Subject to any express warranty provided pursuant to clause 8.1 above the Customer accepts liability for ascertaining that the Products ordered are fit for their intended purpose.
- 8.3 The Contract contains express warranties, undertakings and obligations of Service Direct. All other conditions, warranties (including those relating to satisfactory quality and fitness for purpose), terms, undertakings and obligations of Service Direct whether implied by statute, common law, custom, trade usage or otherwise and all duties of care, contractual or otherwise, and all liabilities (if any) of Service Direct arising therefrom are hereby wholly excluded to the extent permitted by law.
- 8.4 Service Direct's liability, if any, for any loss or damage, including without limitation the Customer's legal and other costs and expenses, however caused, in connection with or arising out of the Contract (including without limitation in respect of the indemnities given by Service Direct) or the performance or non-performance of the Services will:
- 8.4.1 in the case of loss or damage arising from physical loss or damage to any tangible property caused by Service Direct's negligence or malicious act or omission, not exceed £1 million in respect of any one claim or series of claims arising out of the same event or circumstances; and
- 8.4.2 in respect of all other claims in connection with or arising out of the Contract in the aggregate, not exceed the Price (excluding VAT) payable to Service Direct by the Customer in respect of the Products supplied under the Contract.
- 8.5 Notwithstanding clause 8.4, Service Direct shall not be liable in connection with or arising out of the Contract for:-
- 8.5.1 any indirect or consequential loss or damage however caused;
- 8.5.2 damage or loss of use, operating time, profits, revenue, anticipated savings, contracts, business, market, data or intangible property, however caused;
- 8.5.3 any claim unless made with reasonable details in writing to Service Direct no later than (i) 7 days (or such longer period as may be reasonable in the circumstances) after the date the claimable event first comes (or ought reasonably to have come) to the notice of the Customer, and (ii) 3 months after completion of the supply of the Products under the Contract.
- 8.6 The term "however caused" shall mean arising by reason of breach of contract, misrepresentation (whether made prior to or in the Contract), negligence or other tort, breach of statutory duty or other wrongful act or omission (whether wilful or not) or otherwise, however fundamental the result.
- 8.7 Notwithstanding any other provision of the Contract, all exclusions and limitations of liability contained in the Contract shall apply regardless of whether the loss or damage was foreseeable or whether the Customer notifies Service Direct of the possibility of any greater loss or damage and all such exclusions shall only apply so far as permitted by law and in particular nothing in the Contract shall affect liability for death or personal injury caused by negligence to the extent prohibited by the Unfair Contract Terms Act 1977 or fraudulent misrepresentation or other fraud.
- 8.8 The Customer agrees to indemnify at all times hereafter Service Direct against all claims, demands, costs and expenses in excess of the liability expressly accepted by Service Direct under the Contract.
- 8.9 Where any valid claim is based on any defect in the quality or condition of the Products or their failure to meet specification, Service Direct shall be entitled to rectify, repair or replace the Products (or the part in question) free of charge or, at Service Direct's sole discretion, refund to the Customer the Price of the Products or a fair proportion of it, but Service Direct shall have no further liability to the Customer arising from such claim.
- 8.10 The Customer acknowledges that it has had the opportunity to negotiate different terms of the Contract. In view of the exclusions of liability under the Contract, Service Direct advises the Customer to maintain adequate insurance.
- 8.11 No third party shall be entitled to the benefit of any other provisions in the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999 ("the TP Act"), save that Service Direct shall hold on trust for itself and its staff the benefit of the exclusions and limitations of liability, and indemnities given by the Customer expressed in favour of Service Direct contained in the Contract, and Service Direct's staff shall have such benefit under the TP Act but in each case only to the extent that Service Direct shall determine in its absolute discretion, and Service Direct shall be entitled to vary or cancel the Contract without the consent of any of its staff or any third party whatsoever.

9. FORCE MAJEURE

- The Customer acknowledges that Service Direct's provision of the Products is dependent upon the proper performance by Service Direct's suppliers and licensors of their contracts with Service Direct and that, while Service Direct shall use its reasonable endeavours to procure that they comply with such contracts, Service Direct cannot be liable for any suppliers or licensors to the extent that they fail to comply with their contractual obligations to Service Direct. Also Service Direct shall not be liable in respect of any breach of the Contract due to any other cause beyond its reasonable control including, Act of God, inclement weather, labour dispute, interruption of supplies, act or omission of Government or PSTN operators or other competent authority or other party for whom Service Direct is not responsible.

10. INDEMNITY

- Without prejudice to any other provisions of the Agreement, the Customer shall indemnify at all times hereafter Service Direct and its staff against all losses, liabilities, claims, demands, costs and expenses that result from the neglect or default of the Customer or any breach of its obligations under the Contract.

11. CONFIDENTIALITY

- Except as expressly stated in the Contract, each party agrees to take all reasonable steps to prevent any disclosure by it or its staff to any third party of any secret or confidential information belonging to the other party which comes to its possession through the performance of the Contract, provided that this obligation of confidence will not apply in respect of any disclosure in so far as is reasonably required for evidence in proceedings concerning the Contract or required by law or by any regulatory authority nor in respect of any information which is or becomes in the public domain other than as a result of the recipient's breach of the Contract. The Customer agrees that the contents of the Contract and Service Direct's prices are trade secrets or confidential information. However, either party shall be free to announce that the Customer is a client of Service Direct.

12. TELECOMMUNICATIONS REQUIREMENTS

- 12.1 When computer equipment is connected to a public network, i.e. a switchboard or telephone network, certain regulations of the telecommunications provider apply. It is the sole responsibility of the Customer to ensure compliance with all such regulations.

13. ASSIGNMENT

- 13.1 The Customer shall not assign its rights or obligations under the Contract except with the prior written consent of Service Direct.
- 13.2 The benefit of this Contract may be assigned or transferred (in whole or in part) by Service Direct to any member of the Service Direct Group or to a successor to the relevant part of Service Direct's business.

14. ENFORCEABILITY

- The Customer acknowledges that it has read and accepts the terms of the Contract and that in signing the Contract it has been duly authorised by its parent company (if the Customer is a corporation) or all its partners (if the Customer is a partnership) to bind the same jointly and severally to the performance of the Contract should the Customer fail to meet any of its obligations hereunder.

15. ENTIRE AGREEMENT; EXCLUSION OF MISREPRESENTATION

- The Contract constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between the parties with respect to all matters referred to herein. Each of the parties acknowledges and agrees that in entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in the Contract as a warranty. The only remedy available to it for breach of any warranties in the Contract shall be for breach of contract under the terms of the Contract.

16. DATA PROTECTION

- Service Direct reserves the right to put the names and other information from the registration form relating to its customers into a computerised directory for use by affiliated persons (eg persons in which Service Direct has an interest directly or indirectly), equipment suppliers, service providers, insurers, credit referencing agencies or to any other person to assist in making credit decisions and in aid of fraud prevention.

17. GENERAL

- 17.1 If any provision of the Contract shall be declared to be invalid or ineffective in any respect, the validity, legality and enforceability of the remaining provisions of the Contract shall not in any way be affected or impaired thereby.
- 17.2 Any failure in or delay by Service Direct to take any action to enforce any part of the Contract shall not operate as a waiver of that breach or any other breach, and no waiver of any breach shall operate as a waiver of any subsequent breach.
- 17.3 Except as stated above, the Contract may only be modified if such modification is in writing and signed by a duly authorised representative of each party.
- 17.4 Any notice hereunder sent by Service Direct to the Customer shall be deemed received by the Customer 48 hours after the date of first class pre-paid postage to the Customer's address given on the Order Form or such subsequent address as may have been properly notified to Service Direct.
- 17.5 The Agreement shall be governed by and construed in accordance with the laws of England and Wales. Service Direct and the Customer irrevocably submit to the non exclusive jurisdiction of the Courts of England and Wales.