

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

Buyer: the person, firm or company who purchases the Goods from the Seller.

Seller: Capita Managed IT Services Limited whose registered office is at Hillview House, 61 Church Road, Newtownabbey, Co. Antrim, BT36 7LQ.

Contract: any contract between the Seller and the Buyer for the sale and purchase of the Goods, incorporating these conditions.

Goods: any goods agreed in the Contract to be supplied to the Buyer by the Seller (including any part or parts of them).

1.2 Words in the singular include the plural, and in the plural include the singular.

1.3 A reference to one gender includes a reference to the other gender.

1.4 Condition headings do not affect the interpretation of these conditions.

Data Protection Legislation: Means the General Data Protection Regulations, the Law Enforcement Directive and any applicable national implementing Laws as amended from time to time including: the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; and all applicable Law about the processing of personal data and privacy.

2. APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.3 the Contract shall be on 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).

2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 These conditions apply to all the Seller's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by the Seller. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in the Contract. Nothing in this condition shall exclude or limit the Seller's liability for fraudulent misrepresentation.

2.4 Each order or acceptance of a quotation for Goods by the Buyer from the Seller shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions.

2.5 No order placed by the Buyer shall be deemed to be accepted by the Seller until a written acknowledgement of order is issued by the Seller or (if earlier) the Seller delivers the Goods to the Buyer.

2.6 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.

3. DESCRIPTION

3.1 The quantity and description of the Goods shall be as set out in the Seller's quotation or acknowledgement of order.

3.2 The Seller will not be liable in respect of any loss or damage caused by or resulting from any variation for whatever reason in the manufacturer's specifications or technical data and will not be responsible for any loss or damage resulting from curtailment or cessation of supply of Goods following such variation.

4. DELIVERY

4.1 Any period or date for delivery stated in the Contract is intended as an estimate only and is not a contractual commitment and the Seller shall not be liable for any damages or losses arising out of the delay.

4.2 Delivery of the Goods to the Buyer's address or any other place stipulated by the Buyer in writing shall constitute delivery.

4.3 Where the Goods are to be delivered in instalments each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

4.4 If the Goods are lost or damaged in transit or before delivery, the Seller will, at its sole discretion, refund the cost of, or repair or replace free of charge, the lost or damaged Goods if the Buyer notifies the Seller in writing of the nature and extent of the damage or loss within 3 days of delivery or receipt of invoice.

4.5 If the Seller fails to deliver the Goods for any reason other than by cause beyond the Seller's reasonable control or the Buyer's fault and the Seller is accordingly liable to the Buyer the Seller's liability shall be limited to the excess of any other cost to the Buyer (in the cheapest available market) of similar Goods to replace those not delivered over the price of the Goods.

5. PASSING OF PROPERTY AND RISK

5.1 Property in the Goods shall remain with the Seller until such time as all monies due from the Buyer to the Seller (upon whatever grounds and howsoever, such liability shall have been incurred) have been paid in full.

5.2 Notwithstanding the provisions of this condition, the Seller shall be entitled to bring an action against the Buyer for the price of the Goods in the event of non-payment by the buyer by the due date as if the property in the Goods had already passed to the Buyer or shall have the right by notice in writing to the Buyer at any time after the agreed delivery date to pass the property in the Goods to the Buyer as from, the date of such notice.

5.3 Until such time as the property in the Goods passes to the Buyer,

(a) the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and properly stored, protected and insured and identified as the Seller's property.

(b) the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds in a separate bank account and, in the case of tangible proceeds, properly stored, protected and insured.

5.4 The Seller shall be entitled at any time to require the Buyer to return the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer where the Goods are stored and repossess the Goods.

5.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for an indebtedness any of the Goods which remain the property of Seller, but if the Buyer does so all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) become immediately due and payable.

5.6 The Buyer shall at its own risk take all necessary steps to protect the Seller's title to the Goods against claims by third parties.

5.7 The risk in the Goods shall pass to the Buyer on delivery.

6. PRICE

6.1 Unless otherwise agreed by the Seller in writing, the price for the Goods shall be the price set out in the Seller's price list published on the date of delivery or deemed delivery.

6.2 The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Buyer shall pay in addition when it is due to pay for the Goods.

7. PAYMENT

7.1 Subject to condition 7.4, payment of the price for the Goods is due in pounds sterling.

7.2 Payment terms are 30 days from date of invoice

7.3 No payment shall be deemed to have been received until the Seller has received cleared funds.

7.4 All payments payable to the Seller under the Contract shall become due immediately on its termination despite any other provision.

7.5 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Seller to the Buyer.

7.6 If the Buyer fails to pay the Seller any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Seller on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment.

8. WARRANTY AND LIMITATION OF LIABILITY

8.1 Subject to the conditions below the Buyer shall be entitled to the benefit of any warranty or guarantee as is given by the manufacturer or supplier to the Seller.

8.2 The above warranty is given by the Seller subject to the following Conditions:

(a) the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer,

(b) the Seller shall be under no liability in respect of any defect arising from misuse or failure to observe the manufacturers or the Seller's instructions (whether oral or in writing),

(c) the Seller shall be under no liability under the above warranty (or any other warranty or condition or guarantee) if the total price for the Goods has not been paid.

8.3 Subject as expressly provided in these Conditions end except where the Goods are sold to a person dealing as a Consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

8.4 If the Buyer deals as a consumer as defined in Section 12 of the Unfair Contract Terms Act 1977 the statutory rights of the Buyer are not affected by this Contract.

8.5 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet the specification is notified to the Seller within 7 days from the date of delivery, the Seller shall be entitled to replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer.

8.6 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation or any implied warranty, condition or other term, or any duty at common law or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, except as expressly provided in these conditions.

8.7 The Seller shall not be liable for the loss of or damage to any software programs occurring during, or after the consequence of, the repair or upgrade of any of the Goods, whether under warranty or not.

9. RETURN OF GOODS/CANCELLATION

9.1 The Buyer shall not return any of the Goods to Seller or cancel any order without the Seller's written consent and Seller shall be under no liability whatsoever for any Goods returned by the Buyer without such consent and will be entitled to reject return of such Goods.

9.2 The Seller reserves the right to make a cancellation charge for the cancellation of any order and/or the return of any Goods which may include the cost of all loss (including loss of profit and losses incurred as the result of placing orders with third parties for supply of all or part of the Goods), costs (including the cost of all labour and materials used whether by the Seller or by any third party), damages, charges and expenses incurred by the Seller as a result of cancellation.

10. EXPORT AND/OR RE-EXPORT LIMITATION

Having regard to the current statutory or other United Kingdom government regulations in force from time to time and, in the case of Goods manufactured in the United States of America, to the current export rules and regulations of the United States Department of Commerce in force from time to time and regardless of any disclosure made by the Buyer to the Seller of an ultimate destination for any Goods, the Buyer will not export or re-export directly any Goods without first obtaining all such written consents or authorisations as may be required by any applicable government regulations.

11. TERMINATION

11.1 This Condition applies if:

- (a) the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or becomes bankrupt or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
- (b) an encumbrancer takes possession, or a receiver or administrative receiver is appointed of any of the property or assets of the Buyer; or
- (c) the Buyer ceases, or threatens to cease to carry on business; or
- (d) the Buyer is in breach of any term, condition or provision of the Contract; or
- (e) the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

11.2 If this condition applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered out not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

12. ASSIGNMENT

12.1 The Seller may assign the Contract or any part of it to any person, firm or company.

12.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Seller.

13. FORCE MAJEURE

The Seller shall have no liability in respect of any failure or delay in fulfilling its obligations to the extent that fulfillment thereof is prevented, frustrated, impeded and / or delayed or rendered uneconomic as a consequence of any circumstances or event beyond the reasonable control of the Seller.

14. GENERAL

14.1 Each right or remedy of the Seller under the Contract is without prejudice to any other right or remedy of the Seller whether under the Contract or not.

14.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

14.3 Failure or delay by the Seller in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

14.4 Any waiver by the Seller of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

14.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

14.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by the law of Northern Ireland and the parties submit to the exclusive jurisdiction of the courts of Northern Ireland.

14.7 The order processing and administration of the order placed under the Contract by the Seller may be carried out by its resources based outside of the European Economic Area, including the processing of any relevant Personal Data (including but not limited to Name, Work Email Address and Work Phone number) provided by the Buyer. The Seller shall protect any such Personal Data provided by the Buyer as though it belonged to the Seller, and in line with applicable Data Protection Legislation.

15. COMMUNICATIONS

15.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first-class post or sent by fax to the party concerned at its registered office.

15.2 Communications shall be deemed to have been received:

- (a) if sent by pre-paid first-class post, two working days after posting (exclusive of the day of posting); or
- (b) if delivered by hand, on the day of delivery; or
- (c) if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.