

Capita Managed IT Solutions – Terms & Conditions

1. DEFINITIONS

1.1 In these terms and conditions, unless the context otherwise requires, the following expressions have the following meanings:

“Agreement” any contract for the supply by Capita to the Customer of the Products and/or the Services which is not the subject of any other written agreement between Capita and the Customer.

“Customer” the customer described in the Agreement.

“Products” the goods, software and /or other items to be supplied by Capita as described in the Agreement.

“Services” the services to be performed by Capita as described in the Agreement.

“Third Party Products” Products not manufactured or assembled or produced by Capita and which are supplied to Capita by a third party for re- supply by Capita.

1.2 In these terms and conditions the masculine includes the feminine and the neuter, and the singular includes the plural and vice versa, as the context admits or requires.

1.3 The headings to the clauses of these terms and conditions are for convenience only and will not affect its construction or interpretation.

1.4 If there is any conflict between any of the terms on the face of the Agreement or any quotation (excluding in each case these terms and conditions) and these terms and conditions, these terms and conditions shall prevail, unless varied in accordance with clause 2.4.

2. PRODUCTS AND SERVICES

2.1 Capita shall supply and the Customer shall purchase the Products and/or Services in accordance with these terms and conditions.

2.2 Subject to clause 2.4, the Agreement will be on these terms and conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order or similar document).

2.3 The Customer acknowledges that it does not rely on any descriptions of the Products or Services or any representations by employees or agents of Capita which are not confirmed by Capita in writing.

2.4 Any variation to these terms and conditions shall have no effect unless expressly agreed in writing and signed by a duly authorised signatory of Capita.

- 2.5 Any quotation is given on the basis that no Agreement will come into existence until Capita acknowledges the order to the Customer. Any quotation is valid until close of business on the day given only provided Capita has not previously withdrawn it.

3. PRICE AND PAYMENT

- 3.1 The price of the Products and/or Services shall be the price set out in Capita's quotation or, where there is no valid or applicable quotation, Capita's standard price list therefor current at the date of delivery of the Products or performance of the Services.
- 3.2 All prices exclude:
- 3.2.1 Capita's charges for transport and insurance;
 - 3.2.2 Capita's charges for installation or configuration services;
 - 3.2.3 reasonable travel, subsistence and other expenses connected with the provision of the Services
 - 3.2.4 all taxes including Value Added Tax which shall be paid by the Customer at the rate and in the manner for the time being prescribed by law
- 3.3 Any charges payable by the Customer hereunder shall be paid (unless otherwise provided elsewhere in this Agreement) within 30 days of the date of Capita's invoice therefor (inclusive of the date of the invoice).
- 3.4 If the Customer fails to make any payment under the Agreement or any other agreement between the Customer and Capita on the due date then (without prejudice to any other right or remedy available to Capita) Capita shall be entitled to:
- 3.4.1 terminate the Agreement; and/or
 - 3.4.2 suspend supply of the Products or performance of the Services to the Customer and / or the supply or performance of any other products or services due to the Customer under any other agreement; and/or
 - 3.4.3 charge interest on such sum on a day to day basis (as well after as before any judgement) from the due date to the date of actual payment (both dates inclusive) at the rate of 5% above the base rate of National Westminster Bank plc from time to time in force until payment is made in full.
- 3.5 All amounts payable hereunder by the Customer will be payable without set-off or counterclaim.

4. DELIVERY, PROPERTY AND RISK

- 4.1 The Products are to be delivered and the Services performed at Capita's premises or such other premises as Capita shall agree in writing.
- 4.2 Any dates specified by Capita for delivery of the Products or performance of the Services are approximate only and may not be made of the essence by notice. If no dates are so specified, delivery and performance will be within a reasonable time.
- 4.3 Subject to the other provisions of these terms and conditions Capita will not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Products or performance of the Services (even if caused by Capita's negligence) nor unless such delay exceeds 180 days will any delay entitle the Customer to terminate or rescind the Agreement.

- 4.4 Capita shall not be liable for any non-delivery of Products (even if caused by Capita's negligence) unless written notice is given to Capita within 7 days of the date when the Products would in the ordinary course of events have been received.
- 4.5 If the Customer fails to take delivery of any of the Products when they are ready for delivery or to provide any instructions, documents, licences or authorisations required to enable the Products to be delivered on time, the Products will be deemed to have been delivered and (without prejudice to its other rights) Capita may:
 - 4.5.1 store or arrange for the storage of the Products until actual delivery or sale and charge the Customer for all related costs and expenses (including, without limitation, storage and insurance); and/or
 - 4.5.2 following written notice to the Customer, sell any of the Products at the best price reasonably obtainable in the circumstances and charge the Customer for any shortfall below the price under the Agreement.
- 4.6 Ownership of Products will not pass to the Customer until Capita has received in full (in cash or cleared funds) all sums due to it in respect of:
 - 4.6.1 the Products and the Services; and
 - 4.6.2 all other sums which are or which become due to Capita from the Customer on any account.
- 4.7 Until ownership of the Products has passed to the Customer, the Customer must:
 - 4.7.1 hold the Products on a fiduciary basis as Capita's bailee;
 - 4.7.2 store the Products (at no cost to Capita) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as Capita's property;
 - 4.7.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Products.
- 4.8 The Customer's right to possession of the Products will terminate immediately if:
 - 4.8.1 any of the events referred to in clause 8.1 occur in respect of the Customer; or
 - 4.8.2 the Customer encumbers or in any way charges any of the Products.
- 4.9 Capita will be entitled to recover payment for the Products notwithstanding that title in any of the Products has not passed from Capita.
- 4.10 The Customer grants Capita, its agents and employees an irrevocable licence at any time to enter any premises where the Products are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.
- 4.11 Notwithstanding that property in the Products may not have passed to Customer, risk in the Products shall pass to the Customer on delivery.

5. ACCEPTANCE OF PRODUCTS AND SERVICES

- 5.1 Unless the Customer shall within 7 days after delivery or performance, inspect the Products or product of the Services and notify Capita in writing of any defects found, the Products and Services shall be deemed to have been accepted on delivery or performance (as applicable) and the Customer shall not be entitled to reject them.

6. WARRANTY

- 6.1 In respect of Third Party Products, the Customer shall be entitled to the benefit of any warranty or guarantee as is given by the third party manufacturer or software owner to

Capita. If Third Party Products become faulty more than 30 days after delivery the Customer is advised to contact the manufacturer and use their warranty procedure. If the Customer wishes to make a warranty claim, it must comply with the manufacturer's instructions and warranty procedure. Capita will provide the Customer with contact information for the relevant manufacturer who will deal directly with the Customer to resolve the issue. Notwithstanding the above, Capita may investigate any alleged defect during the continuance of the manufacturer's warranty on behalf of the third party and may carry out repairs or make modifications to Third Party Products on behalf of the third party where so authorised by such third party.

- 6.2 Capita warrants that:
 - 6.2.1 the Products (excluding Third Party Products) are of satisfactory quality;
 - 6.2.2 the Services will be provided with reasonable care and skill.

In the event that the Products or Services provided do not conform to this warranty, Capita will, at its option:

- 6.2.3 replace or repair such Products; or
- 6.2.4 take such steps as it deems necessary (acting reasonably) to remedy the shortcomings; or
- 6.2.5 refund such part of the price as is reasonable and appropriate

provided that performance of any one of the above options shall constitute an entire discharge of Capita's liability under this warranty.

- 6.3 The warranty in clause 6.2 is conditional upon the Customer giving written notice to Capita detailing any alleged shortcoming within 14 days of the time when the Customer discovers or ought to have discovered the shortcoming and in any event within 3 months of delivery of the Products or performance or non-performance of the relevant Service (or part thereof).
- 6.4 All warranties provided under these terms and conditions shall be invalidated if the Products and/or Third Party Products have been worked upon, altered or damaged in any way by the Customer or its employees or agents, or if the Products and/or Third Party Products have not been used in accordance with the manufacturer's instructions.
- 6.5 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are excluded from the Agreement.
- 6.6 Nothing in these terms and conditions excludes or limits the liability of Capita for death or personal injury caused by Capita's negligence or fraudulent misrepresentation.
- 6.7 Capita shall be under no liability for any indirect or consequential losses, damages, costs or expenses, nor for any loss of profit, loss of business, loss of goodwill, loss of data and costs of recovery of the same, or loss of anticipated savings in contract, tort (including negligence and breach of statutory duty) or otherwise howsoever arising which may be suffered by the Customer.

- 6.8 Notwithstanding the foregoing provisions of this clause 6 Capita's aggregate liability to the Customer pursuant to the Agreement (in contract, tort, negligence, breach of statutory duty or otherwise) shall not exceed the price of the Products and/or Services.
- 6.9 In the event that Capita, in its absolute discretion, agrees to accept the return for credit of unwanted products, the Products and/or Third Party Products must be returned with Capita's prior written agreement within 14 days of delivery. The Products and/or Third Party Products must be unopened, with the manufacturers' seals intact and in perfect re-saleable condition. All Products and/or Third Party Products returned in these circumstances will not be subject to a re-stocking fee.
- 6.10 Any Products and/or Third Party Products returned unopened, with the manufacturers' seal intact and in re-saleable condition, outside of the 14 days specified in clause 6.9 may be returned for credit subject to Capita's absolute discretion and shall be decided by Capita on a case-by-case basis. All Products and/or Third Party Products returned in these circumstances will be subject to a reasonable re-stocking fee to cover our administrative charges.
- 6.11 No software on which seals have been broken can be returned for credit. If any software discs are faulty, then the Customer is advised to use the manufacturer's warranty procedure. Software Licences are non-returnable unless the corresponding software is materially non-compliant with its specification or the physical media on which it is supplied is defective.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 The Customer shall indemnify Capita against all costs, claims, demands, expenses and liabilities arising out of or in connection with any claim that the normal use or possession of products supplied by the Customer for integration purposes or performance of the Services in accordance with the Customer's instructions infringes the intellectual property rights (including without limitation any patent, copyright, database right, registered design, design right or trade mark) of any third party.
- 7.2 All intellectual property rights of whatever nature arising in respect of the performance of the Services by Capita shall be and remain vested absolutely in Capita.
- 7.3 Where the Products or the product of the Services include software such software shall be licensed to the Customer in accordance with the provisions of the licence agreement supplied to the Customer with such software, a copy of which can be supplied to the Customer on request. The Customer agrees to comply with the provisions of such licence agreement.

8. TERMINATION

- 8.1 Notwithstanding anything else contained herein, the Agreement may be terminated:
- 8.1.1 by Capita forthwith on giving notice in writing to the Customer if the Customer shall fail to pay any sum due under these terms and conditions and such sum remains unpaid for 14 days after written notice from Capita that such sum has not been paid (such notice to contain a warning of Capita's intention to terminate); or
- 8.1.2 by either party forthwith on giving notice in writing to the other if the other commits any material or persistent breach of this Agreement (other than any failure by the Customer to make any payment hereunder in which event the provisions of clause

- 8.1.1 shall apply) and shall have failed (where the breach is capable of remedy) to remedy the breach within 21 days after the receipt of a request in writing from the party not in breach, to remedy the breach (such request setting out the breach and indicating that failure to remedy may result in termination of this Agreement); or
- 8.1.3 by either party forthwith on giving notice in writing to the other if the other party becomes the subject of a voluntary arrangement under section 1 of the Insolvency Act 1986, is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income, has passed a resolution for its winding-up, has a petition presented to any court for its winding-up or for an administration order, or suffers any distraint, execution or other process levied or enforced on any of its property which is not paid out, withdrawn or discharged within 20 days, or shall cease or threaten to cease to carry on business.
- 8.2 Capita shall not be obliged on termination of the Agreement to make any refund to the Customer of any sums paid in advance and the Customer shall forthwith pay any outstanding invoices.
- 8.3 Any termination of the Agreement howsoever occasioned shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.
- 8.4 Capita uses all reasonable endeavours to ensure that all prices and descriptions quoted in Capita's catalogue and website are correct and accurate. In the case of a manifest error or omission, Capita will be entitled to rescind the contract, notwithstanding that Capita may have already accepted the Customer's Order and/or received payment from the Customer. Capita's liability in such an event shall be limited to the return of any money that the Customer has paid in respect of the Order.
- 8.5 In the case of a manifest error in relation to price, the Customer will be entitled to purchase the Products and/or Third Party Products or Services by paying the difference between the quoted price and the correct price, as confirmed in writing by Capita after the manifest error has been discovered. A "manifest error", as the term is used in this clause 8, means, in relation to an incorrect price, a price quoted in error by Capita which is more than 10% less than the price that would have been quoted had the mistake not been made.

9. CONFIDENTIALITY

Each party shall treat as confidential all information obtained from the other pursuant to the Agreement and shall not divulge such information to any person (except to such party's own employees and then only to those employees who need to know the same) without the other party's prior written consent, provided that this clause shall not extend to information which was rightfully in the possession of such party prior to the commencement of the negotiations leading to the Agreement, which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this Clause), is required to be disclosed as a matter of law or which is trivial or obvious. The foregoing obligations as to confidentiality shall survive any termination of the Agreement.

10. FORCE MAJEURE

Save for the Customer's obligations in relation to payment neither party shall be liable for any delay in performing any of its obligations hereunder if such delay is caused by circumstances beyond the reasonable control of the party so delaying and such party shall be entitled to a reasonable extension of time for the performance of such obligations.

11. GENERAL

- 11.1 No forbearance, delay or indulgence by either party in enforcing the provisions of these terms and conditions shall prejudice or restrict the rights of that party nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right, power or remedy herein conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party and each such right, power or remedy shall be cumulative.
- 11.2 The Agreement constitutes the entire agreement between the parties, relating to the subject matter hereof, provided that nothing in this clause 11.2 will exclude any liability which one party would otherwise have to the other party in respect of any statements made fraudulently.
- 11.3 The Customer shall not assign or otherwise transfer the Agreement or any of its rights and obligations hereunder whether in whole or in part without the prior written consent of Capita.
- 11.4 Capita may enter into any sub-contract with any person for the performance of any part of the Agreement. Capita shall not be relieved from any of its obligations hereunder by entering into any sub-contract for the performance of any part of the Agreement.
- 11.5 All notices which are required to be given hereunder shall be in writing and shall be sent to the address of the recipient set out in the Agreement or such other address as the recipient may designate by notice given in accordance with the provisions of this clause, and shall be marked for the attention of the Company Secretary. Any such notice may be delivered personally or by first class pre-paid letter or facsimile transmission and shall be deemed to have been served if by hand when delivered, if by first class post 48 hours after posting and if by facsimile transmission 12 hours after transmission.
- 11.6 The Agreement shall be governed by and construed in accordance with the laws of England and both parties submit to the exclusive jurisdiction of the English Courts.
- 11.7 Notwithstanding that the whole or any part of any provision of this Agreement may prove to be illegal or unenforceable the other provisions of this Agreement and the remainder of the provision in question shall remain in full force and effect.
- 11.8 The Agreement is enforceable by the original parties to it, by their successors in title and permitted assignees. Any rights of any person to enforce the terms of the Agreement pursuant to the Contracts (Rights of the Third Parties) Act 1999 are excluded.