

TERMS AND CONDITIONS OF SALE

1 DEFINITION

In these conditions the following terms shall have the following meanings ascribed to them: "**Agreement**" means these terms and conditions; "**Customer**" means the person, firm or organisation placing an order with the Supplier; "**Order**" means an order placed by the Customer with the Supplier and accepted by the Supplier; "**Products**" means the hardware, software or services purchased by the Customer from the Supplier; "**Supplier**" means Darwin ITC Limited; "**Year 2000 Compliant**" means that the relevant item will perform in accordance with the British Standards Institute definition of Year 2000 Conformity including the Amplification of the Definition and Rules (DISC PD 2000-1) (as amended from time to time).

2 AGREEMENTS

(a) This Agreement sets out the terms and conditions governing the sale of the Products described in the Order. Unless explicitly stated in the Order, the provision of maintenance or other services is not covered by this Agreement and if required will be provided on the Supplier's standard terms and conditions.

3 PRODUCT SPECIFICATION CHANGES

(a) The Supplier reserves the right without prior approval from, or notice to, the Customer to make changes to the Products:-

- (i) Which do not affect their function or interchange ability or performance or;
- (ii) Which are required for purposes of safety, or
- (iii) Which meet the Supplier's Products specification.

4 ORDERS AND DELIVERY

(a) Delivery or performance dates in relation to the supply by the Supplier of Products are approximate only and, unless otherwise expressly stated, time is not of the essence for delivery.

(b) Risk of loss or damage to any of the Products shall pass to the Customer on delivery to the Customer's premises or other delivery address specified by the Customer or upon collection by the Customer.

(c) Subject to the agreement of the Customer, the Supplier may make and the Customer shall accept, partial deliveries of Products ordered. Each such partial delivery shall be deemed to be the subject of a separate Agreement. Failure by the Supplier to make deliveries in accordance with an Agreement, or any claim by the Customer in respect of any one or more such deliveries, shall not entitle the Customer to treat any other Agreement as at an end.

5 PRICE

(a) Unless the written quotation given by the Supplier expressly provides that prices shall remain firm for a specified period, the prices quoted shall be subject to increases reflecting any increase in the Supplier's costs in respect of materials, labour, services, transport or changes in exchange rates between the date of order and the date of despatch.

(b) Unless stated otherwise, prices quoted exclude tax, duty, insurance, freight and delivery, which will be charged at applicable rates.

6 TERMS OF PAYMENT

(a) Payment shall be made in full without any deduction or set-off within thirty days of the date of invoice.

(b) If the Customer fails to pay any invoice in accordance with the Supplier's payment terms then, without prejudice to its other rights and remedies, the Supplier shall be entitled to (i) suspend deliveries due to the Customer under any Agreement, and (ii) charge interest on the sum outstanding on a day to day basis from the date of invoice until the date payment is made at the rate of 4% per annum above the base rate ruling from time to time of National Westminster Bank plc.

7 CANCELLATION

(a) Where an order has been accepted by the Supplier and the Customer notified of the delivery date the Customer may only cancel the order or any portion thereof with the written consent of the Supplier (except where the Supplier notifies the Customer of a change in price or discount but not where delivery is suspended by virtue of 6(b)(i) above). If the Supplier agrees in writing to full or partial cancellation the Supplier shall be entitled to levy a cancellation charge by way of liquidated damages calculated as a percentage of the quoted price of the cancelled order or portion thereof as detailed in clause 7(b).

(b)(i) Where cancellation occurs 31 or more days before the scheduled date of delivery the cancellation charge shall be 10% of the order value or portion thereof or £100 whichever is the greater (ii) Where cancellation occurs 30 days or less before the scheduled date of delivery the cancellation charge shall be 15% of the order value or portion thereof or £100 whichever is the greater.

(c) The Customer may not cancel an order or portion thereof after delivery.

(d) Where the order is for a special product not normally stocked by the Supplier and the Customer has been notified that the order cannot be cancelled after the order is placed, the Customer may not cancel the order.

8 ACCEPTANCE OF PRODUCTS

(a) The Customer shall be deemed to accept the Products upon delivery unless the Customer notifies the Supplier in writing within 14 days of the date of delivery of the Products that the Products or any part thereof are defective.

9 WARRANTIES

(a) Unless otherwise agreed in writing the Products are sold with the benefit of the manufacturer's warranty (where available) and the Customer's sole remedy for breach of that warranty is as stated in the applicable manufacturer's terms and conditions. This warranty is conditional upon compliance by the Customer with the terms of this Agreement.

(b) Where Products are to be returned to the Supplier pursuant to the warranty given in clause 9(a), the Customer shall notify the Supplier within 14 days of the fault complained of arising and comply with the procedure set out in clause 10 below.

(c) The warranty provided in clause 9(a) shall not apply to Products that have been altered, treated, processed or worked upon while in the Customer's hands other than in the ordinary course of installation or operation in accordance with the recommendations of the Supplier or manufacturer.

(d) The Supplier warrants that any services provided by it pursuant to this Agreement will be provided with reasonable care and skill.

(e) Save as aforesaid all express or implied conditions or warranties statutory or otherwise as to the state, quality, fitness, suitability or performance of the Products (including without limitation any warranty that the Products are Year 2000 compliant) are expressly excluded to the greatest extent possible.

10 RETURNS

(a) Authority for return of Products under warranty or for any other reason must be obtained in advance by the Customer sending a completed Materials Returns Authorisation (MRA) form to the Supplier. Upon authorisation of such return, the Supplier shall issue the Customer a MRA number for said return.

(b) If the supplier determines that the Products returned to it are not defective as defined in the applicable manufacturer's warranty or that the fault is the result of misuse, the Customer shall reimburse the Supplier all costs of handling, fault diagnosis and transportation.

(c) Any Products replaced under warranty shall become the property of the Supplier or the manufacturer as appropriate.

(d) As a condition of return, the Customer must comply with the procedures detailed on the MRA form.

11 INTELLECTUAL PROPERTY RIGHTS

(a) The Customer shall notify the Supplier forthwith in writing if any allegation is made that the Customer's use or resale of the Products infringes the intellectual property rights, including without limitation any patent, copyright, trade or service mark or design right (whether registered or unregistered) of any third party.

(b) In the event that any such allegation referred to in clause 11(a) is made (or in the Supplier's reasonable opinion is likely to be made), the Supplier shall at its option and expense either procure the right for the Customer to use and resell the Products which are the subject of the allegation or replace or modify the same so that they become non-infringing. If none of the above is reasonably feasible the Supplier shall grant the Customer a credit for the normal depreciated value of the Product

(c) The Supplier will not be liable if the alleged infringement is based upon:-

- (i) The use of the Products in combination with products not sold by the Supplier; or
- (ii) The furnishing to the Customer of any information, data, service or application assistance by a third party.

12 LOSS OR DAMAGE IN TRANSIT

(a) The Supplier will entertain no claim for loss or damage to Products in transit unless notification of the nature and extent of such claim is received by the Supplier within ten days of delivery.

(b) The Supplier's liability under this clause 12 shall in no event exceed the invoiced value of the Products lost or damaged.

13 PROPERTY

(a) Title to the Products shall not pass to the Customer until the Supplier has received payment in full of the price therefore.

(b) Until title of the Products passes to the Customer, the Customer shall keep the Products in a fiduciary capacity for the Supplier and shall take all steps necessary to ensure that the same are kept in a safe place and are properly insured to their full value while in the Customer's custody.

14 LIABILITY

(a) Neither party shall be liable for failure to perform its contractual obligations (save for a payment obligation) if such failure results from Act of God, governmental act, fire, explosion, accident, industrial dispute, or any other cause beyond that party's control.

(b) The Supplier's liability for physical damage to the Customer's property is limited to £1,000,000 in respect of any event or series of related events.

(c) Neither party limits or excludes its liability for personal injury or death of any person resulting from its negligence.

(d) Save as set out in sub clauses (b) and (c) above, in no event shall the Supplier's liability to the Customer under this Agreement (whether arising in contract, tort, breach of statutory duty or otherwise) exceed the value of the monies received by it under this Agreement or £1,000,000 whichever is the lesser.

(e) The Supplier excludes all liabilities not expressly included in this Agreement, and in particular shall have no liability for (i) destruction of or damage to any data; (ii) any loss of profits, goodwill, revenue, production, anticipated savings, use or contracts or any form of special, indirect or consequential losses whatsoever including any arising from late delivery.

(f) In no event shall the Supplier be liable to the Customer for:

- (i) any loss or damage; or
- (ii) any claims, demands, actions, costs, expenses, losses or damages arising from or incurred by reason of any claim against the Customer or any third party

as a result of the non-Year 2000 Compliance of any Products provided under this Agreement before, during or after the Year 2000.

15 SOFTWARE

(a) With regard to any software supplied pursuant to this Agreement over which the Supplier or third parties hold title or other rights, the Supplier shall permit or procure for the Customer (as the case may require) the right to use that software in the operation of the Products.

(b) With regard to any software referred to in sub-clause (a) above the Customer undertakes not to disclose or make available any part or parts thereof to any third party without the prior consent of the Supplier.

(c) Software shall be supplied on the terms of the applicable licence agreement.

16 TERMINATIONS

(a) If, at any time, either party makes default or commits any breach of its obligations hereunder and (upon receiving written notice from the other of such breach or default) fails to remedy the same within 14 days, or is involved in any legal proceedings concerning its solvency, or commences liquidation or ceases or threatens to cease trading, or if serious doubts arise as to its solvency, then the other party shall be entitled, without prejudice to its other rights, to terminate this Agreement forthwith by notice in writing to the other.

(b) Upon termination of this Agreement by the Supplier for whatever reason, the Supplier shall, without prejudice to its other rights and remedies, be paid (i) the price of any Products delivered to the Customer prior to the date of termination; and (ii) the price of any Products ordered by the Supplier on behalf of the Customer for which the Supplier has paid or is legally bound to pay.

17 GENERAL

(a) This Agreement represents the entire agreement between the parties. Each party warrants that no representation not recorded in this Agreement has been made which has induced it to enter into this Agreement.

(b) No failure, delay, relaxation or indulgence on the part of 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.

(c) Any notice given under this Agreement by either party to the other must be in writing and shall be effected by personal delivery, or registered mail postage to such address as shall have been notified for the purpose and shall in the case of postage be deemed to be delivered within 48 hours after the date of posting if posted in the United Kingdom.

(d) The provisions of this Agreement are severable and if any provision (not being a fundamental term) is held to be invalid or unenforceable by a court of competent jurisdiction such invalidity or unenforceability shall not affect the validity or enforceability of the other provisions.

(e) This Agreement shall be governed by and construed in accordance with English Law and the parties hereto submit to the jurisdiction of the English Courts.