

# Standard Terms and Conditions for Supply and Services

These terms and conditions ("the Terms and Conditions") are dated [Agreement Date] (the "Effective Date") and shall apply to any purchase of Products and Support Services from AAC Systems Ltd, a company registered in England and Wales with Company Number 5555689 whose principal place of business is at No.1 Bell Street, Maidenhead, Berkshire, SL6 1BU ("We", "Us", "Our"), by the party identified in the corresponding Purchase Order ("You", "Your") (hereinafter jointly referred to as "Both of Us").

Both of Us HEREBY AGREE AS FOLLOWS:

## 1 Definitions

The following terms have the meanings set forth below whenever they are used in these terms and conditions:

"Business Days"	means the days from Monday to Friday excluding English public holidays.
"Business Hours"	means the hours (in English time) from 09:00 to 17:00, on any Business Day.
"Commencement Date"	means the commencement date for the supply of the Products and/ or Support Services as specified in the applicable Quotation/ Proposal Form.
"Contract"	means these Terms and Conditions together with a valid Purchase Order and a Quotation/ Proposal.
"Quotation/ Proposal"	The form We send You that is subject to these Terms and Conditions and specifies: <ul style="list-style-type: none"><li>a) the name of any Software to be supplied, together with the applicable Product Fee; and</li><li>b) a description of any Support Services to be supplied, together with the applicable Service Fee; and</li><li>c) a description of any Hardware to be supplied, together with the applicable Product Fee</li></ul>
"Delivery Date"	means the date on which We shall first make the Products available to You, as specified in the Quotation/ Proposal Form.
"Documentation"	means the applicable specification, on-line help and other information made available by Us to You at Our discretion in either printed or machine readable form with respect to the Products.
"Equipment"	means the target hardware onto which the Software may be installed, and in conjunction with which the Software will operate.
"Hardware"	means the hardware products supplied by Us to You as set out in the applicable Quotation/ Proposal.
"Lead Time"	means the number of calendar days between Our receiving the Purchase Order from You and the availability of the corresponding Products and Support Services, for supply to You.
"Licence Agreement"	means the separate agreement setting out the terms and conditions under which You may use an item of Software, executed by and between the vendor of that Software and You.
"Licence"	means the licence under which You may use the Software, granted under the Licence Agreement.
"Problem notification"	means Your notification to Us of a Problem.
"Problem "	means the failure of the Products to comply with a reasonable interpretation of its Documentation.
"Product Fee"	means the fees paid by You to Us for the Software and/ or Hardware as set out in the applicable Quotation/ Proposal.

"Product"	means the Hardware and Software products supplied by Us to You as set out in the applicable Quotation/ Proposal.
"Purchase Order"	means a written purchase order that has been raised by You, and acknowledged by Us and is subject to these Terms and Conditions.
"Services"	means the services for the supply, installation, training and access to, and use of, the Products and also the Support Services as set out in the applicable Quotation/ Proposal.
"Site"	means Your site at which the Products shall be delivered and at which the Equipment is located and is set out in the applicable Quotation/ proposal.
"Specification"	means the document setting out the functional and technical specification for the Support Services and the Products as incorporated in or referenced by the applicable Quotation/ Proposal.
"Software"	means the software licensed to You in accordance with the terms and conditions of the corresponding Licence Agreement and supported under these Terms and Conditions.
"Support Services Fee"	means the fee payable by You to Us in respect of the provision of technical Support for the Products, as set out in the applicable Quotation/ Proposal.
"Support Services"	means the provision of a helpdesk during Business Hours for You to contact Us via telephone or email for support with the Products as set out in the applicable Quotation/ Proposal.

## 2 Contract Formation

- 2.1 These Terms and Conditions comprise a legally binding contract for the purchase and supply of Products and/ or Support Services as set out in the applicable Quotation/ Proposal, independent of all other Contracts that might exist between Us and You.
- 2.2 Any terms and conditions set out in any Purchase Order, or other document supplied by You that are in addition to or at variance with these Terms and Conditions shall be void and of no effect unless We expressly agree otherwise in writing.
- 2.3 Timescales are given to You in good faith, and We shall make reasonable endeavours to meet them, but they are estimates only and not 'of the essence'.

## 3 Hardware

- 3.1 We shall send by post the Hardware to the Site. Occasionally and only if set out in the applicable Quotation/ Proposal, we shall deliver the Hardware to the Site.
- 3.2 Risk in the Hardware shall pass to You upon delivery. Title in the Hardware will pass to You on receipt of payment of all sums due to Us in respect of the Hardware.
- 3.3 Until title in the Hardware passes to You, You shall:
  - a) hold the Hardware as bailee for Us and take proper care of them, storing them in accordance with the instructions and separately so as to show clearly that they belong to Us;
  - b) not sell or part with possession of the Hardware other than in the normal course of business, and keep the Hardware free from any mortgage, charge, lien or other encumbrance; and
  - c) not remove, alter, obscure, or otherwise interfere with any identifying marks, labels or storage instructions placed on the Hardware or their packaging by Us or the manufacturer; and
  - d) keep the Hardware insured at Your expense with an insurer of good repute against all insurable risks including (but not limited to) loss or damage by fire or theft for an amount not less than the applicable price as set out in the corresponding Quotation/ Proposal.
- 3.4 Before title has passed to You and without prejudice to any of Our other rights, We may repossess and/or sell some or all of the Hardware at any time and We or Our agents may enter Your premises or vehicles, with or without vehicles, for that purpose. This right and licence shall continue after and despite the termination for any reason of the Contract.

#### **4 Supply of the Software**

- 4.1 We shall deliver the Software either remotely, through the post or by Us attending the Site in accordance with what is set out in the Quotation/ Proposal.
- 4.2 We shall enable You to access and use the Software.
- 4.3 We shall install, integrate, configure, and train You on the Software in accordance with what is set out in the applicable Quotation/ Proposal.

#### **5 Client's Obligations**

- 5.1 You shall provide co-operation and support to Us in Our efforts to supply Products. Such co-operation and support shall include, but not be limited to:
  - a) a reasonable level of responsiveness to Our requirements and communications;
  - b) maintaining valid and current server, machine and user licenses
  - c) the prompt review and analysis of the work performed;
  - d) the making available of facilities including but not limited to computer facilities, desk space, telephone access and parking when and to the extent as is reasonably requested by Us;
  - e) granting to Us remote access to the Equipment on which the Software is installed if required; and
  - f) the making available of competent Support Contacts and other personnel as appropriate to assist Us when and to the extent as is reasonably requested by Us.
  - g) make available facilities for remote diagnostics and support including communication links
  - h) only use the Products in accordance with the operator instructions and any Documentation We provide
  - i) maintain procedures to facilitate reconstruction of any lost or damaged files, data or programs
  - j) not adapting, modifying, enhancing or upgrading the Products in any way unless You have Our express permission in writing
- 5.2 You agree that if You do not perform Your obligations under this Contract and this affects Our ability to perform, We shall not be considered to be in default under this Contract to the extent that we have been affected.

#### **6 Personnel**

- 6.1 In the event that either party visits the premises of the other (the "Host"), the visiting party (the "Guest") shall be advised of all rules, regulations and practices they should comply with whilst on the Host's premises. The Guest's staff, agents and sub-contractors shall comply with such rules and regulations whenever they are on the Host's premises. The Host shall take reasonable precautions to ensure the health and safety of the Guest's staff, agents and sub-contractors whilst they are on its premises.
- 6.2 Without in any way restricting the right of an employee freely to accept employment and change employment, if either party (the "Hiring Party") induces the other party's employee engaged in the performance of the relevant Contract to enter its service at any time during the term of the relevant Contract or during a period of six months thereafter, then the Hiring Party shall pay to the other party an amount being equivalent to fifty percent (50%) of the employee's net annual salary, such sum being a genuine pre-estimate of the cost of the disruption that such inducement would cause to the efficient conduct of the affected party's business.

#### **7 Support Services**

- 7.1 Subject to a request from You via a Purchase Order, We shall provide technical Support Services in respect of the Products. Support Services shall commence and continue for a period of twelve (12) months, automatically renewing for further periods of twelve (12) months upon each anniversary of the Commencement Date unless either party gives three (3) months written notice prior to such anniversary that it does not wish to renew, unless and until terminated in accordance with the provisions of Clause 13.2.
- 7.2 We shall not be obliged to provide Support Services if payment of the Support Service Fee is overdue.
- 7.3 In consideration for the payment of the Support Fee, We shall, during the Support Hours:
  - a) Respond to Problems via email and Telephone.
  - b) Respond to reasonable queries from Support Contacts via email and telephone.

- c) Provide remote access technical support if required.
- 7.4 If as part of the Support Service You require Us to attend Your Site to assist with any Problems or general queries, training requirements or for any other reason, We will charge You an additional fee agreed in writing with You before We attend.
- 7.5 You shall nominate a minimum of two (2) Support Contacts. You may change the identities of Support Contacts from time to time upon reasonable prior written notice (including by email) to Us. You accept that it may not be possible for Us to resolve any specific Problem until it can be discussed with one of the Support Contacts.
- 7.6 Upon request, You shall ensure that Our support personnel are provided with the appropriate:
- a) approvals, access information and remote electronic access to the Software, or physical access to the computer equipment on which the Software is installed if in Our reasonable opinion such physical access is necessary for the purpose of investigating or rectifying a reported Problem; or
  - b) approvals and access information to the Hardware or physical access to the Hardware if in Our reasonable opinion such physical access is necessary for the purpose of investigating or rectifying a reported Problem
- In the event of You providing such access but without the appropriate approvals, or in the event of You not providing such access, You shall not seek any action or remedy from Us in association with any loss or damage to You arising from such unauthorised access or lack of access.
- 7.7 We shall not be obliged to continue to provide Support Services in respect of the relevant Problem if You cannot provide or obtain approvals, information and access set out in Clause 7.6 above.
- 7.8 We may supply Support Services Ourselves or by Our appointed agents. We will remain fully responsible for the delivery of Support Services to You.
- 7.9 We shall be under no obligation to provide Support Services in respect of:
- a) a Problem resulting from any modifications or customisation of the Products not made by Us. For the avoidance of doubt, modifications to the Software shall include but not be limited to changes in any component of the Software, changes to any database schema or database structure and changes to the disc layout;
  - b) incorrect or unauthorised use of the Products or operator error where such use or operation is not in accordance with the Documentation;
  - c) any programs used in conjunction with the Supported Software;
  - d) use of the Software with target hardware, operating systems or other supporting software other than the Equipment; and
  - e) faults in the Equipment.
- 7.10 We shall notify You in writing (to include by email) as soon as We are aware that any Problem is not covered by Clause 7.3 and/or if it falls into one of the exclusions set out in Clause 7.9 and any time spent by Us investigating such Problems at Your request after its notification will be chargeable at Our then current rates. We may invoice such charges at Our discretion and You shall pay each such invoice within thirty (30) days of the date thereon.

## **8 Delivery**

- 8.1 We shall use reasonable endeavours to deliver the Products by the Delivery Date or as soon as possible thereafter subject to Clause 2.3. Your only remedy for unreasonable delivery will be the right to terminate the Contract in accordance with Clause 13.2.

## **9 Payment & Taxes**

- 9.1 We shall invoice You for the Product Fee on delivery unless otherwise specified in the Quotation/ Proposal.
- 9.2 We shall invoice You for the Support Services Fee annually in advance, unless otherwise specified in the Quotation/ Proposal Form.
- 9.3 You shall pay each of Our valid invoices within thirty (30) days of the date on the invoice.

- 9.4 You shall be liable for any national, European Union, value added, sales, excise, state, local, withholding or other taxes or customs duties applicable.
- 9.5 If You do not pay Us by the due date, We have the right to charge interest at the rate of four (4) percent per annum above the base rate of the Bank of England (or its successor) from the date payment was due until payment is received by Us.
- 9.6 We may increase the Support Service Fee once in any twelve (12) month period giving You at least thirty (30) days notice in writing.
- 9.7 If payment of the Product Fee and Support Service Fee or any part thereof is overdue, then unless You have notified Us in writing that such payment is in dispute within ten (10) days of the receipt of the corresponding invoice We shall notify You in writing of such delay and in the event that such fees are not paid in full within ten (10) days of the date of such notice, We may at Our option:
- a) suspend provision of the Support Services, and/or delivery of the Products until the corresponding overdue fees are paid in full; or
  - b) treat such as a material breach and terminate the relevant Contract in accordance with Clause 13.2 (a).

## **10 Warranty**

- 10.1 We hereby warrant that for a period of thirty (30) days from delivery, the Software will conform in all material respects to its Documentation.
- 10.2 We hereby warrant that the Support Services will be carried out with reasonable skill and care by personnel whose qualifications and experience will be appropriate for the tasks to which they are allocated.
- 10.3 We hereby warrant that for a period of thirty (30) days from delivery, Hardware will be free of defects in materials and workmanship and comply with their Documentation. In the event that the relevant manufacturer of the Hardware offers a longer warranty period, We shall extend this warranty offering accordingly.
- 10.4 The warranties set out in this Clause 10 are the only warranties that apply to the Products and Support Services. We hereby exclude all other conditions, warranties, representations or other terms that might otherwise be implied or incorporated into the relevant Contract by law, such as (but not limited to) those of satisfactory quality, fitness for a particular or any purpose or ability to achieve any particular result.

## **11 Warranty Remedies**

- 11.1 You hereby agree that Your sole remedy in respect of any non-conformance with any warranty in 10.1 is that We will remedy such non-conformance (either by Ourselves or through a third party) and if in Our reasonable opinion, We are unable to remedy such non-conformance We will accept the return of the non-conforming Software and procure the replacement of the defective Software.
- 11.2 If Our delivery of the Support Services fails to comply with the warranty in Clause 10.2 on any occasion, You shall promptly notify Us providing all details that may be necessary for Us to remedy the breach, and We shall use Our reasonable endeavours to remedy such breach (either by Ourselves or through a third party).
- 11.3 You hereby agree that Your sole remedy in respect of any non-conformance with the warranty in Clause 10.3 is that You shall return any defective Products to Us at Your cost and We shall procure the repair or replacement of any defective Products.
- 11.4 You must promptly notify Us in writing of any breach of the above warranties in order to benefit from the remedy stated above. You shall provide all information reasonably requested by Us to assist Us in resolving such breach.
- 11.5 In the event of damaged or faulty Products that are no longer covered by their warranty, You may request repairs or replacement Products from Us. We shall use Our reasonable endeavours to offer You such repairs or replacement at Our then-current price provided such repairs or replacement are then available to Us.

## **12 Limitation of Liability**

- 12.1 Nothing in these Terms and Conditions shall exclude or limit Our liability for (i) fraud or other criminal act, (ii) personal injury or death caused by the negligence of Our employees in the performance of their duties under these Terms and Conditions or by defects in the Software or Products, or (iii) breach of the other party's intellectual property rights, or (iv) any other liability that cannot be excluded by law.

- 12.2 Subject to Clause 12.1, We will not be liable under these Terms and Conditions for any damages (whether foreseeable or foreseen) resulting from: (i) loss of, damage to or corruption of data, (ii) loss of use, (iii) lost profits, (iv) loss of anticipated savings, and/or (v) any indirect or consequential loss.
- 12.3 If there is loss of, damage to or corruption of data arising from anything that We have or have not done under these Terms and Conditions, We shall be liable for the cost of restoring such data from backups where available, but We shall not be liable for the value of any lost or corrupted data that could not be recovered.
- 12.4 Except as provided in Clause 12.1 and in Clause **Error! Reference source not found.**, Our maximum aggregate liability to You for any cause whatsoever shall be for direct costs and damages only and will be limited to a sum equivalent to 125% of the aggregate of the Product Fee and Service Fees paid and payable by You under the Contract that is the subject of Your claim. In respect of any claim arising from the delivery of, or failure to deliver, Support Services Our maximum aggregate liability to You shall be for direct costs and damages only and will be limited to a sum equivalent to 125% of the Support Services Fee paid and payable by You during the twelve (12) month period immediately prior to Your claim, in respect of the Support Service that is the subject of such claim.
- 12.5 We exclude all liability that We have not expressly accepted in this Agreement. These limitations will apply regardless of the form of action under which a claim is made. In this Clause 12.5 "We" includes Our employees, sub-contractors, licensors and suppliers who shall therefore have the benefit of the limits and exclusions of liability set out in this Clause 12 in terms of the Contracts (Rights of Third Parties) Act 1999.
- 12.6 No action, regardless of form, arising out of transactions occurring under or contemplated under the relevant Contract may be brought by either party more than two (2) years after the cause of action has accrued.
- 12.7 Save as provided in Clause 12.8, You shall have no remedy in respect of any representation (whether written or oral) made to You upon which You relied in entering into the relevant Contract ("Misrepresentation") and We shall have no liability to You other than pursuant to the express terms of the relevant Contract.
- 12.8 Nothing in these terms and conditions shall exclude or limit Our liability for any Misrepresentation made by Us fraudulently.

### **13 Duration & Termination**

- 13.1 These Terms and Conditions shall become effective on the Commencement Date and shall continue unless and until terminated in accordance with the provisions of Clause 13.2.
- 13.2 Either party (the "Initiating Party") may forthwith terminate the Contract at any time upon giving written notice to the other party, if the other party:
- a) commits any material breach of any term of the relevant Contract that is not reasonably capable of remedy or, if it commits a breach which is reasonably capable of remedy, fails to remedy such breach to the reasonable satisfaction of the Initiating Party within thirty (30) days of a written request to do so; or
  - b) has a receiver or administrative receiver appointed over it or any of its undertaking or assets, or shall pass a resolution for winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction where the resulting entity shall assume all of the liabilities of it), or a court of competent jurisdiction shall make an order to that effect, or if it shall become subject to an administration order, or shall enter into any voluntary arrangement with its creditors, or shall cease or threaten to cease to carry on its business, or if any substantially similar event shall take place under the laws of another jurisdiction; or
  - c) on giving not less than ninety (90) days notice to terminate where such notice period shall end at the end of the current Contract Year, where Support Services have been purchased.
- 13.3 The expiry of these terms and conditions or the termination thereof for whatever reasons shall be without prejudice to any other rights or remedies a party may be entitled to under law and shall not affect the respective rights and liabilities of the parties accrued prior to such termination.

### **14 Intellectual Property**

- 14.1 Title and all intellectual property rights to any design, new software, new protocol, new interface, enhancement, update, derivative works, revised screen text or any other items that We create for You shall remain vested in Us or Our licensors. Any rights not expressly granted herein are reserved to Us.

## **15 Confidentiality**

- 15.1 Except as expressly provided in Clause 15.3, You shall not disclose to any third party any part of the Services without Our prior written consent.
- 15.2 Confidential Information shall be defined as any information (whether disclosed in oral, written or electronic form) belonging or relating to a party's business affairs or activities and which: (i) has been marked as confidential or proprietary, (ii) has been identified orally or in writing as being of a confidential nature, or (iii) may reasonably be supposed to be confidential in the circumstances.
- 15.3 Each party undertakes that for a period of three (3) years from the date of disclosure it will not, without the prior written consent of the other party, use, disclose, copy or modify the other party's Confidential Information (or permit others to do so) other than is necessary for the performance of its rights and obligations under the relevant Contract. In any event, each party hereby agrees that it shall treat the other's Confidential Information with the same degree of care as it employs with regard to its own Confidential Information of a like nature and in any event in accordance with best current commercial security practices, disclosing such Confidential Information only to those of its employees, consultants and bona fide professional advisers who need to have such information for the purposes of the Contract, and ensuring that such employees, consultants and professional advisers shall be bound by the same confidentiality obligations as are set out in this Clause 15. Each party agrees that it shall be liable for any breach of this Clause 15 by any employee, consultant or professional advisor to whom it has disclosed the other party's Confidential Information as though it had committed the breach itself.
- 15.4 The provisions of Clause 15.3 shall not apply to:
- a) any information in the public domain otherwise than by breach of the relevant Contract;
  - b) information lawfully in the possession of the receiving party thereof before disclosure by the disclosing party, as evidenced by written documents;
  - c) information lawfully obtained without restriction from a third party, as evidenced by written documents; and
  - d) information required to be disclosed by a court of competent jurisdiction, governmental body or applicable regulatory authority provided that the party under such duty to disclose shall use all reasonable endeavours to give the other party as much prior notice of such disclosure as is reasonably practicable and permitted by law.
- 15.5 We may publicise Our involvement with You with Your prior written consent, such consent not to be unreasonably withheld or delayed.

## **16 Assignment**

- 16.1 You may not assign any Contract or otherwise transfer any rights or obligations under it except with Our prior written consent.

## **17 Force Majeure**

- 17.1 Neither party is responsible for failure to fulfil its obligations hereunder due to causes beyond its reasonable control that directly or indirectly delay or prevent its timely performance hereunder. Dates or times by which each party is required to render performance under the Contract shall be postponed automatically to the extent that the party is delayed or prevented from meeting them by such causes.

## **18 Notices**

- 18.1 All notices made pursuant to the Contract must be made in writing. Any written notice to be given or made pursuant to the provisions of the Contract shall be sent postage prepaid by registered or recorded mail or reputable courier service, addressed to the other party's address stated above and in the case of notices to be sent to Us, shall be marked for the attention of the directors, and in the case of notices to be sent to You, shall be marked for the attention of the directors. Unless otherwise provided in the Contract, all notices shall be deemed as given on the day of their receipt by the receiving party.

## **19 Entire Agreement**

- 19.1 Each Contract constitutes the entire agreement between the parties with respect to its subject matter and shall supersede all previous representations, agreements and other communications between the parties, both oral and written. The terms and conditions of the Contract shall prevail notwithstanding any variance with the terms and conditions of any order or purchase order submitted by You.

## **20 Law & Jurisdiction**

- 20.1 In the event of any dispute arising under any Contract the parties will attempt to settle it by mediation. The mediator shall be selected from the Ministry of Justice Civil Mediation Directory, subject to the agreement of both parties. Save in respect of late or non-payment of undisputed invoices, no party may commence court proceedings in respect of any dispute arising out of these terms and conditions until it has attempted to settle the dispute by mediation and either the parties have been unable to agree on a mediator or the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay. Unless agreed otherwise the mediator's costs and expenses shall be shared equally between the parties.
- 20.2 Subject to Clause 20.1, each party hereby irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any disputes arising out of or relating to any Contract and that the laws of England shall govern any Contract.
- 20.3 Notwithstanding the provisions of Clause 20.1, nothing in this agreement shall limit either party's right to seek injunctive relief.

## **21 Survival**

The following clauses shall continue to be in effect after the termination or expiration of the relevant Contract: 1, 13.2 and 13.21.

## **22 General**

If any provision of any Contract is adjudged by a court of competent jurisdiction to be invalid, void, or unenforceable, the parties agree that the remaining provisions shall not be affected thereby, and that the remainder of any Contract shall remain valid and enforceable. No waiver by either party of any term hereof shall constitute a waiver of any such term in any other case whether prior or subsequent thereto. No single or partial exercise of any power or right by either party shall preclude any other or further exercise thereof. No Contract may be changed, modified, amended, released or discharged except by a subsequent written agreement or amendment executed by duly authorised representatives of Us and You. A person who is not a party to any Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of any Contract except as expressly set out herein, but this does not affect any right or remedy that such third party may have without reference to the Contracts (Rights of Third Parties) Act 1999.