

TERMS AND CONDITIONS OF SALE

1. **DEFINITIONS**

“We” “us” and “our” refer to CAE Technology Services Limited.

“You” and “your” refer to the person, firm or company who offers or agrees to buy Products and/or Services from us.

The “Price” means the price of Products and/or Services plus any other charges specified overleaf.

The “Contract” means every agreement between us and you for the sale and purchase of the Products and/or Services and any other products and/or services.

The “Order” means an offer from you to buy the Products and/or Services described overleaf on the terms and conditions set out herein.

The “Products” means the products described overleaf.

The “Services” means the services described overleaf.

2. **TERMS**

These terms and conditions shall apply to the Contract. Any offer, order, acceptance, sale and/or delivery or any conduct in confirmation of any transaction will be subject to these terms and conditions which are the only basis upon which we do business and shall prevail notwithstanding any printed or other conditions referred to in any purchase order or other document prepared by you or on your behalf. No other agreement, representation, promise, undertaking or understanding of any kind shall add to, vary or waive any of these terms and conditions unless it is expressly confirmed in writing by one of our directors. A Contract cannot be cancelled except with our consent and on terms which will indemnify us against all loss.

3. **SUPPLY OF PRODUCTS AND SERVICES**

3.1. We will in normal circumstances supply Products and/or Services for which you send us by letter, fax or e-mail a numbered purchase order in accordance with our current quotation but we shall be entitled:

- (a) to withdraw or cancel a quotation at any time without liability for any loss howsoever arising;

- (b) to refuse or delay the supply where your credit or the conduct of your account is unsatisfactory in our opinion;
 - (c) to modify designs and specifications for Products without prior notification and withdraw Products replacing them with items of the equivalent specification;
 - (d) to vary or withdraw Services by notice to you provided that such variation or withdrawal shall not take effect until the end of the period for which the price of such Services has been paid in advance or for 3 months, whichever is the later.
- 3.2. Any software comprised in or supplied with our Products and/or Services is supplied under licence from the software owner and no rights of ownership are transferred to you. You must comply with the terms of the software licence and indemnify us against the consequences of any breach.

4. PRICES

- 4.1. Notwithstanding any Price specified in our quotation or your purchase order, the Price of the Products and/or Services shall be that applicable on the date of delivery. We shall endeavour to maintain Prices quoted but we reserve the right to increase quoted Prices at any time to take account of increase in costs including (without limitation) costs of labour, materials, carriage or other overheads.
- 4.2. Prices for the Products and/or Services do not include, unless otherwise specified, VAT or other sales tax, insurance, delivery or special packing or alteration or installation to your order.

5. TERMS OF PAYMENT

- 5.1 Our terms of payment are strictly 30 days from date of invoice. You shall not be entitled to make any deduction from the amount of our invoice or withhold payment by reason of any counterclaim or set-off or otherwise.
- 5.2 We shall be entitled to charge interest at the Barclays Bank plc base rate plus 3% from the date of invoice on the amount of any overdue invoice.

- 5.3. Failure by you to pay in accordance with the provisions of this clause shall entitle us, without prejudice to our right to damages, to suspend any outstanding deliveries or to cancel the Contract.

6. DELIVERY OF PRODUCTS AND SERVICES

- 6.1. Any times quoted for delivery are estimates only and, although we will use all reasonable efforts to deliver the Products and/or Services in accordance with the times specified, failure to comply with such times shall not constitute a breach of this Contract. We will deliver Services with all reasonable professional skill but it will be your responsibility to provide access and facilities for us to work and a safe and convenient working environment on your premises for our personnel.
- 6.2. Unless otherwise agreed in writing, we shall be entitled to make deliveries of Products by instalments and these terms and conditions shall apply to each partial delivery.
- 6.3. The risk in the Products passes to you on delivery to you of the Products by us or our nominated carrier but if you collect Products from our premises risk shall pass to you when the Products leave our premises.
- 6.4. Where you notify us that you are unable to take delivery of the Products within seven days of our giving notice that the Products are ready for despatch, we shall endeavour to store the Products and you shall reimburse us without delay all reasonable costs and storage charges incurred by us until the time of delivery.
- 6.5. Where
- 6.5.1. the Products are to be delivered by instalments or against call-off and you either:
- (a) fail to accept any delivery when due or, in the case of call-offs, fail to accept outstanding deliveries within one month of the date of the Order acceptance; or
- (b) default in making any payment when due; or

- 6.5.2 fail to provide access or safe and convenient facilities for us to carry out the Services or have not paid the Price for further Services on the expiry of a Services contract;

then we may cancel any or all subsequent delivery of Products and/or Services and you shall compensate us in full for any loss or expense arising from such cancellation and, notwithstanding our duty to mitigate our loss, shall compensate us in full for the loss of the Price in respect of the Products and/or Services ordered, but not delivered.

- 6.6. You shall examine the Products on arrival and notify us by facsimile transmission or by registered post within 7 days of delivery of any damage or short delivery of the Products specified in the Order. If such notification is not received by us, the delivery shall be deemed accepted by you. We will accept within a further 7 days the return of Products found to be damaged if they and their packaging are returned to us in otherwise sound and unmarked condition. Your right to reject Products on the ground that they were short or damaged on delivery will be lost after 14 days from delivery.

7. TITLE

- 7.1. Notwithstanding delivery to you, ownership in the Products shall remain with us until you have paid the Price for them. If you have not paid us on the due date and by specific reference to our invoice(s) we shall be entitled in our discretion to allocate to accrued interest and/or outstanding invoices any payment subsequently received. Until such payment you shall be a fiduciary bailee of the Products and shall take all necessary measures for the protection of them (including maintaining adequate insurance therefor) and not dispose of them or any part of them to any other party whatsoever, whether by sale or otherwise, or create or allow to be created any rights in the Products in favour of any third party.
- 7.2. So long as the property in the Products remains in us, we shall have the right (without prejudice to your obligation to purchase the Products), to re-take possession of the Products and for that purpose to go on and into any premises occupied by you.

7.3 In the event that

- (a) you receive notice that a receiver or manager is to be appointed in respect of the whole or any part of your business;
- (b) you receive notice of a petition to wind up or for an Administration Order in respect of your company or you resolve to wind up (save for the purposes of a reconstruction or amalgamation);
- (c) you decide to make an arrangement with your creditors;
- (d) you become unable to pay your debts within the meaning of the Insolvency Act 1986

you must immediately inform us. Furthermore, all Products which are still our property pursuant to the provisions of Clause 7 and are in your possession shall be delivered immediately to us. Without prejudice to your duty to make delivery as aforesaid we shall also have the right, upon receiving notice from whatever source of the happening of any one of the said events, to enter any premises during normal business hours to take possession of our Products.

8. WARRANTY ON PRODUCTS

- 8.1. We will endeavour to ensure that you receive the benefit of any guarantee or warranty which may have been given to us by a third party manufacturer. You are responsible for informing yourselves as to the terms of such guarantee or warranty and ensuring that any conditions are fully complied with.
- 8.2. If no guarantee or warranty is offered by the manufacturer or supplier, or if anything we have done has invalidated such guarantee or warranty, then if you shall notify us in writing within 90 days (7 days in the case of software) from the date of delivery that the Products supplied by us have failed, we will replace or repair at our discretion any Products proved to be defective. "Defective" means suffering from any defect in physical workmanship of the Product and, in the case of software, a defect to the recording media upon which the software is supplied. However, such remedy is only available to you provided that the Product shall be returned to our premises at your expense.
- 8.3. You must ensure that the Products are serviced, maintained and used properly and in accordance with our recommendations (and any guarantee

or warranty) and are not fitted or used with any parts, accessories or ancillary equipment other than those recommended by us or stated by us to be suitable.

- 8.4 During the warranty period set out in Clause 8.2 above, no attempt must be made by you or any third party to remedy any defect or to dismantle or otherwise tamper in any way with the Products except in accordance with our specific instructions, directions and/or requests.

9. CONDITIONS IN RELATION TO SERVICES

- 9.1. The following maintenance is not included and shall be charged for:
- (a) electrical work external to any equipment;
 - (b) maintenance of accessories, attachments, machines or other devices not supplied by us nor agreed in writing;
 - (c) repair of damage arising from:
 - (i) transportation or relocation of equipment not performed by us;
 - (ii) failure of electrical power, air conditioning or humidity control;
 - (iii) changes, alterations or additions not performed by us;
 - (iv) operator error or omission;
 - (d) maintenance rendered more difficult because of changes, alterations or additions;
 - (e) attendance to faults caused by operating equipment outside design specifications or outside any documentation or manuals supplied with the equipment;
 - (f) cleaning, painting, refinishing or touching-up, specification changes, relocation of equipment, addition/removal of accessories, attachments and other devices;
 - (g) software maintenance except when agreed in writing;

- (h) repair of any malfunction due to radiation in the environment of the equipment;
- (i) diagnosis and/or rectification of problems not associated with the equipment;
- (j) diagnosis and/or rectification of problems arising from the operating environment;
- (k) workshop overhaul or repair of equipment which, as a result of fair wear and tear, can no longer be maintained in good working order. For such items we will upon request submit a cost estimate of the work required. In the event that you do not authorise the work to be carried out, the item or items concerned may be deleted from the equipment we have agreed to maintain;
- (l) services provided outside normal working hours (including local and national holidays) unless otherwise agreed in writing.

9.2 Alterations and additions to or in connection with any of the equipment may only be carried out by us and we accept no liability whatsoever for any alterations or additions carried out in contravention of this clause nor for any effect such alterations or additions may have on the equipment.

9.3 We may by notice in writing to you terminate this Agreement forthwith if any of the following events shall occur, *viz.*:

- (a) if you are in breach of any term, condition or provision of this Agreement or required by the law relating to this Agreement, including but not limited to, non-payment and have failed to remedy such breach (if capable of remedy) within 14 days of having received notice from us specifying the nature of the breach;
- (b) if you, being a body corporate shall present a petition or have a petition presented by a creditor for your winding up, or convene a meeting to pass a resolution for voluntary winding up, or shall enter into any liquidation whether compulsory or voluntary (other than for the purposes of reconstruction or amalgamation), shall call a meeting of your creditors, shall enter any composition or arrangement with its creditors, or shall have a receiver of all or any of your undertaking or assets appointed, or shall be unable to pay your debts or shall cease to carry on business.

On termination howsoever or whenever occurring, you shall pay to us all money owing to us in respect of Services under this Agreement or otherwise in addition and without prejudice to any other rights and remedies we may have under this Agreement or in accordance with the law relating to this Agreement.

10. LIABILITY

10.1 (a) Except to the extent that by the law relating to this Agreement it is not lawful to exclude such liability, we shall not be liable to you or to any person for any loss or damage whatsoever or howsoever caused, except as provided in (c) below, arising directly or indirectly in connection with this Agreement or the Services carried out hereunder.

(b) Notwithstanding the foregoing generality, we expressly exclude liability for direct, indirect or consequential loss or damage including, but not limited to loss or damage to data or to other equipment or property whether or not the same may be in our care, custody or control, or for loss of profit, business, revenue, goodwill or anticipated savings.

(c) In the event that any exclusion of liability contained herein shall be held to be invalid for any reason and we become liable for loss or damage, such liability shall be limited to 110% of the Price per annum paid by you for Services under this agreement.

(d) We do not exclude liability for death or personal injury to the extent that we have a liability arising from the negligence of ourselves, our employees, agents or authorised representatives.

10.2. In cases where we are asked to recommend Products we do not warrant that purchase of the Products will satisfy your requirements and we can accept no responsibility if any Products supplied fail to meet your requirements or to achieve any particular level of performance.

10.3. You are advised to make and retain back-up copies of all software (within the terms of your licence) and data. We shall not be liable for any losses consequent to any loss or non-retrieval of data or programs from computer disk or tape for any reason.

11. RIGHTS OF THIRD PARTIES

Nothing in these terms shall confer on any third party any benefit or the right to enforce any term of a contract between you and us.

12. PERSONNEL

You warrant that you will not solicit either directly or indirectly our personnel for a minimum period of six months after such personnel leave our employment except with our express written permission. In the event that you engage any of our personnel to whom you have been introduced or with whom you have had contact during the performance of this agreement, you shall pay an introduction fee of 13 weeks, or the equivalent, of the engaged person's remuneration in your service or employ.

13. FORCE MAJEURE

We shall be under no liability for any delay in delivery or failure of the Products and/or Services in the event that the manufacture, supply or delivery of the Products and/or Services is prevented or delayed by any act or circumstances beyond our reasonable control including, but not limited to Act of God, act of terrorism, legislation, war, fire, drought, failure of fuel or power supply, lock-out, strike or other action taken by employees in contemplation or furtherance of a trade dispute or owing to any inability to procure materials required for the performance of the Contract.

14. WAIVER AND SEVERANCE

14.1. Any indulgence granted by us to you and any failure by us to insist upon strict performance of these terms and conditions shall not be deemed a waiver of any of our rights or remedies nor be deemed a waiver of any subsequent default by you.

14.2. The invalidity in whole or in part of any clause in these terms and conditions shall not affect the validity of the remainder of such clause or these terms and conditions.

15. ASSIGNMENT

The Contract is not assignable by you without our written consent and is between us and you as principals, but we may without consent assign or sub-contract all or any of our rights and obligations hereunder.

16. TERMINATION

If you become insolvent or in our opinion are likely to go into bankruptcy, receivership or liquidation, or make default in or commit a breach of the Contract, we may forthwith terminate the Contract without incurring liability to you and without prejudice to our rights which may have accrued up to the date of termination.

17. GOVERNING LAW

The interpretation and application of the Contract shall be in accordance with English Law and both parties hereby agree to submit to the non-exclusive jurisdiction of the English Courts.

18. HEADINGS

Headings to clauses in these terms and conditions are included for ease of reference only and shall not have any effect on their construction and interpretation.

19. NOTICES

Any notice or document to be given under these terms and conditions shall be given by sending the same in a pre-paid letter or by facsimile transmission to the address of the relevant party set out in the Contract or to such other address as such party may have notified to the other for the purposes hereof. Any notices sent by post shall be deemed (in the absence of evidence of earlier receipt) to have been delivered 2 working days after dispatch and in proving the fact of dispatch it shall be sufficient to show that the envelope containing such notice was properly addressed, stamped and posted. Any notice sent by facsimile transmission shall be deemed to have been delivered on the next working day following its dispatch.