

Terms and Conditions of Sale for Xetec Limited

1. DEFINITIONS

- 1.1 "Products" means goods or services including but not limited to computer hardware and software items to be provided by us to you in accordance with these terms.
- 1.2 "Third Party Software" means all software owned by or licensed to you from a third party owner (whether or not supplied by us) and which comprises part of the Products

2. ORDER ACCEPTANCE

- 2.1 All orders placed with us by you for Products shall constitute an offer to us, under these terms, subject to availability of the Products and to acceptance of the order by our authorised representative.
- 2.2 All orders are accepted and Products supplied subject to these express terms only. No amendment to these terms will be valid unless confirmed in writing by our authorised representative on or after the date the contract is created.
- 2.3 It is agreed that these terms (or any amendments to them) prevail over your terms of purchase, unless otherwise agreed in writing by us.
- 2.4 You cannot rely on statements made before you make the contract with us unless they are made by our authorised representative and either:
 - (a) contained in any estimate (or covering letter) and not withdrawn before the contract is made; or
 - (b) which expressly state that you may rely upon them when entering into the contract.
- 2.5 Nothing in these terms affects or limits our liability for fraudulent misrepresentation.

3. INDEPENDENT CONTRACTOR

The relationship between you and us is that of Independent Contractor. Neither party is the agent of each other, and neither party has any authority to make any contractor make any obligation expressly or impliedly in the name of the other party, without that party's prior written consent for express purposes connected with the performance of this contract.

4. DESPATCH

- 4.1 Any time or date quoted for despatch is to be treated as an estimate only. Despatch may be postponed because of conditions beyond our reasonable control, and in no event shall we be liable for any damages or penalty for delay in despatch or delivery.
- 4.2 Risk shall pass to you at the time the Products are despatched by us. We will accept no liability for any loss or damage caused by the carrier.
- 4.3 You must inspect the Product on delivery. If any products are damaged (or not delivered) you must notify us within five working days of delivery (or the expected delivery time). If proof of delivery is required this must be requested within 14 days of the date of the invoice.
- 4.4 We may deliver the Products in instalments. Each instalment is treated as a separate delivery.

5. CANCELLATION AND RESCHEDULING

Unless otherwise agreed in writing, any request by you for cancellation of any order or for the re-scheduling of any deliveries will only be considered by us if made at least 12 hours before despatch of the Products, and shall be subject to acceptance at our sole discretion, and subject to our reasonable administration charges. You hereby agree to indemnify us against all losses, costs (including the cost of labour and materials used and overheads incurred), damages, charges and expenses arising out of the order and its cancellation or rescheduling.

6. PRICING

- 6.1 Catalogues, price lists and other advertising literature or material as used by us are intended only as an indication as to the price and range of Products offered and no prices, descriptions or other particulars contained in them shall be binding on us.
- 6.2 All prices are given by us at the time of the order on an ex-works basis and you are liable to pay for all transport, packing and insurance costs.
- 6.3 All quoted or listed prices are based on the cost to us of supplying the Products to you. If before delivery of the Products there is an increase in any way of such costs in respect of Products which have not yet been delivered the price payable may be changed (at our discretion) without notice.
- 6.4 All prices are exclusive of Value Added Tax and any similar taxes. All such taxes are payable by you and will be levied in accordance with Republic of Ireland legislation in force at the tax point date.

7. PAYMENT TERMS

- 7.1 Invoices will be raised and dated by us on the date of Despatch of the Products. Unless otherwise specifically requested and agreed, invoices will be payable by you 30 days from the date of invoice. If you do not pay us in full by the due date we will seek legal action.
- 7.2 You must notify us in writing within seven days of the date of our invoice of any errors (for example incorrect prices) in that invoice. If you do not, we may treat you as accepting the accuracy of that invoice.
- 7.3 If you have a credit account with us, we may withdraw it or reduce the credit limit or bring forward the due date for payment without notice.
- 7.4 You do not have the right to set off any money you may claim from us against any sums that you may owe us.
- 7.5 If you owe money to us, we will claim a lien on any of your property in our possession.
- 7.6 Until you pay all debts owed to us;
 - 7.6.1 all Products supplied to you will remain our property;
 - 7.6.2 all Products must be stored so that they are clearly identifiable as our property;
 - 7.6.3 you must insure all such Products (against the risks for which a prudent owner would insure them) and hold the policy on trust for us; and produce a copy of your insurance policy upon request;
 - 7.6.4 you may use such Products and sell them in the ordinary course of your business, but not if:
 - (a) we revoke that right (by informing you in writing), or
 - (b) you become insolvent as defined in clause 13.3 of these terms and conditions.
- 7.7 You must inform us (in writing) immediately if you become insolvent.
- 7.8 If your right to use and sell the Products ends you must allow us to remove them.
- 7.9 We have your permission to enter any premises where the Products may be stored;
- 7.9.1 at any time, to inspect them; and
- 7.9.2 to remove them, using reasonable force if necessary, after your right to use and sell them has ended.
- 7.10 Despite our retention of title to the Products, we have the right to take legal proceedings to recover the price of Products supplied should you not pay us in full by the due date.
- 7.11 You are not our agent. You have no authority to make any contract on our behalf of in our name.
- 7.12 You are not entitled to pledge (or in any way charge by way of security for any indebtedness) any of the Products which remain our property, but if you do so, all monies owing by you to us shall (without prejudice to any other of our rights or remedies) immediately become due and payable.
- 7.13 We reserve the right to stop supplying the Products to you at any time.

8. SPECIFICATION OF PRODUCTS

- 8.1 We will not be liable in respect of any loss or damage caused by or resulting from any variation for whatsoever reason in the manufacturer's specifications or technical date of the Products. Will not be responsible for any loss or damage resulting from curtailment or cessation of supply of the Products following such variation. We will use our reasonable endeavours to advise you of any such impending variation as soon as we receive any notice of it from the manufacturer.
- 8.2 Unless otherwise agreed, the Products are supplied in accordance with the manufacturer's standard specifications as these may be improved substituted or modified.
- 8.3 We reserve the right to increase our quoted or listed prices, or to charge accordingly in respect of any orders accepted for Products of non-standard specifications and in no circumstances will we consider cancellation of such orders or the return of such orders.

9. PROPRIETARY RIGHTS IN SOFTWARE PRODUCTS

- 9.1 You hereby acknowledge that any proprietary rights in any Third Party Software supplied hereunder including, but not limited to, any title or ownership rights, patent rights, copyrights and trade secret rights, shall at all times and for all purposes vest and remain vested in the Third Party Software owner.

9.2 You hereby acknowledge that it is your sole responsibility to comply with any terms and conditions of any licence attaching to Third Party Software supplied and delivered by us (including if so required the execution and return of a Third Party Software licence). Your failure to comply with such terms could result in you being refused a software licence or having it revoked by the proprietary owner. You further agree to indemnify us in respect of any costs, charges or expenses incurred by us as a result of any breach by you of such terms and conditions.

9.3 NO TITLE OR OWNERSHIP OF SOFTWARE PRODUCTS OR ANY THIRD PARTY SOFTWARE LICENSED TO YOU UNDER THIS AGREEMENT IS TRANSFERRED TO YOU UNDER ANY CIRCUMSTANCES.

10. RETURNS

- 10.1 We reserve the right to levy an administration charge in respect of the rotation of Products and returns.
- 10.2 Returns are subject to the following:
 - (a) prior authority having been obtained from us which will be given at our sole discretion;
 - (b) the request for a return must be made within 14 days of the authority to return;
 - (c) our stock rotation policy;
 - (d) the Products must be properly packed;
 - (e) the Products must be in a saleable condition;
 - (f) the Products must be listed;
 - (g) the Products are still covered by warranty (see section 11).

10.3 We reserve the right to reject any Products which do not comply with the terms set out in clause 10.2 above.

10.4 If we agree to accept any Products returned which are not in a saleable condition, we may charge the cost to you of bringing them into a saleable condition.

11. WARRANTY

- 11.1 We warrant that we have good title to or licence to supply all Products to you.
- 11.2 If the hardware Products should prove defective in materials or workmanship under normal operation or service they will be repaired or replaced only in accordance with any warranty cover of terms as provided by the manufacturer of the Products PROVIDED THAT no unauthorised modifications to the Products or to the system of which the Product forms part have taken place. We are not responsible for the cost of labour or other expenses incurred in repairing defective or non-conforming parts.
- 11.3 We reserve the right to test Products returned as faulty and to return to you (at your expense) any products found not to be faulty. In this case we may in addition charge you our costs of testing the products.
- 11.4 All software Products supplied are supplied "as is". Our sole obligation with the supply of software Products is to use all reasonable endeavours to supply a corrected version from the manufacturer concerned if the software Product fails to conform to its product description. You must notify us of any such non-conformity within 90 days of the date of delivery of the software Product.
- 11.5 We cannot accept any liability in relation to any losses, cost or expenses which arise through any difficulty caused over date changes.
- 11.6 If the Products are rejected by you under clauses 11.2 or 11.4 we will only accept the return of such Products as provide in clause 10. We will not consider any claim for compensation, indemnity or refund under liability unless it has been established or agreed with the manufacturer and, where applicable, the insurance company.
- 11.7 EXCEPT AS SPECIFICALLY SET OUT IN THIS CLAUSE 11. WE DISCLAIM AND EXCLUDE ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, BY THE STATUTE OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF DESCRIPTION, DESIGN, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM ANY PREVIOUS COURSE OF DEALING, USAGE OR TRADE PRACTICE.

12. INDEMNITIES AND LIMITS LIABILITY

- 12.1 We disclaim and exclude all liability to you in connection with these terms including your use of the Products. In no event shall we be liable to you for special, indirect or consequential damage including; but not limited to, loss of profits arising from loss of data or in connection with the use of the Products.
- 12.2 You shall indemnify and defend us and our employees in respect of any claims by third parties which arise from our performance or non-performance pursuant to the instructions given by you or your authorised representative.

13. TERMINATION FOR CAUSE

The contract may be terminated immediately by notice in writing:

- 13.1 If either party fails to perform any of its obligations under it and such failure continues for a period of 14 days after written notice of it, by the other party; or
- 13.2 by us if you fail to pay any sums due hereunder by the due date notwithstanding the provisions of late payment as in clause 7.1 or if you become insolvent.
- 13.3 We may treat you as insolvent if;
 - 13.3.1 you are unable to pay your debts as they fall due; or
 - 13.3.2 you (or any item of your property) become the subject of:
 - (a) any formal insolvency procedure (examples of which include receivership, liquidation administration, voluntary arrangements (including a moratorium) or bankruptcy);
 - (b) any application or proposal for any formal insolvency procedure; or
 - (c) any application, procedure or proposal overseas with similar effect or purpose.
- 13.4 any termination of the contract under clause 13. shall be without prejudice to any other rights or remedies a party may be entitled to and shall not affect any accrued rights or liabilities of either party.

14. EXPORT AND OR RE-EXPORT LIMITATION

Regardless of any disclosure made by you to us of an ultimate destination for any Products, you will not export or re-export any Products without first obtaining all such written consents or authorisations as may be required by any applicable government regulations.

15. CONTRACT

- 15.1 The headings in these terms are for ease of reference only and shall not affect their interpretation or construction.
- 15.2 No forbearance, delay indulgence by either party in enforcing its respective rights shall prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms shall be deemed to be a waiver of any other or any later breach.
- 15.3 You agree not to assign any of your contractual rights without our prior written consent.
- 15.4 If any of these terms are unenforceable as drafted it will not affect the enforceability of any other of these terms and it would be enforceable if amended, it will be treated as so amended.
- 15.5 Neither party shall be liable to the other for any delay in failure to perform its obligations hereunder (other than a payment of money) where such delay or failure results from force majeure including any act of God, fire, explosion, accident, Industrial dispute or any cause beyond its reasonable control.
- 15.6 Any document or notice by either of us which is to be served under these terms may be served by leaving it at or by delivering it to (by first class post or by fax) the other's registered office or principle place of business. In the case of post the document or notice will be deemed to have been given two working days after the date of posting. All such notices must be signed.
- 15.7 These terms shall be construed in accordance with Irish Law and the Irish courts shall have non-exclusive jurisdiction.
- 15.8 You are to indemnify us in full and hold us harmless from all expenses and liabilities we may incur (directly or indirectly and including finance costs and legal costs on a full indemnity basis) following any breach by you of any of your obligations under these terms.