

Terms & Conditions

These Terms and Conditions ('Terms') govern your relationship with MCWARE IT SOLUTIONS Ltd (MCWARE IT SOLUTIONS, the company, we or us). All Orders for Goods or Services accepted by us will be subject to the following Terms which will form part of and will govern the Contract of sale. No variation of these Terms will be accepted unless agreed in writing by an authorised person of the company. We will not accept the inclusion of any alternative terms by you which conflict with, alter or add to these Terms.

1. Definitions

- 1.1 'Customer' means a person (otherwise referred to as 'you') who enters into a Contract with us to buy Goods or Services.
 - 1.2 'Person' includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality).
 - 1.3 'Contract' means any contract between you and us for the sale and purchase of Goods or Services, incorporating these Terms.
 - 1.4 'Goods' means any goods agreed in the Contract to be supplied to you by us (including any part or parts of them).
 - 1.5 'Normal Working Hours' means 9am to 5pm on a Working Day
 - 1.6 'Working Day' means Monday to Friday, excluding Bank or other Public holidays.
 - 1.7 'Order' means an order for Goods or Services made by you in accordance with these Terms.
 - 1.8 'Order Confirmation' means our written acceptance of your Order.
 - 1.9 'Services' means services and support provided by us to you.
 - 1.10 'Software' means computer program(s) and associated documentation.
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2. Sale of Goods and Services

- 2.1 MCWARE IT SOLUTIONS will sell and the Customer will buy the Goods and/or Services in accordance with our written quotation (if accepted by the Customer) or the Customer's written order (if accepted by us) subject in either case to these Terms. No order submitted by the Customer is deemed to be accepted by MCWARE IT SOLUTIONS unless we confirm this in writing.
 - 2.2 The Customer is responsible for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer.
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3. Prices and Payment

- 3.1 Goods and Services, together with VAT and other dues, are invoiced at the price prevailing at the time of your order. We reserve the right to vary our prices from time to time.
- 3.2 Invoices for Goods will ordinarily be issued on delivery of the Goods. If the Goods are specific to the Customer or if the Customer fails to take delivery when required MCWARE IT SOLUTIONS may invoice the Customer at any time after the Goods become available.

3.3 The contents of the Invoice, including inter alia the price, shall in the absence of a manifest error, be deemed to have been accepted by the Customer unless the Customer has notified MCWARE IT SOLUTIONS in writing, within 7 days from the date of the Invoice, that such contents are disputed.

3.4 MCWARE IT SOLUTIONS may require the Customer, at any time prior to delivery, to pay a deposit to secure any order or part thereof.

3.5 Any quantity discount given by MCWARE IT SOLUTIONS at the point of order may be removed if the order quantity is subsequently reduced.

3.6 Payment is due prior to delivery unless you have been approved for credit. Our standard credit terms require payment within 30 days from the date of invoice, except in the case of transactions where different terms are agreed by us in writing beforehand. Unless otherwise agreed, payment shall be made in full, in pounds sterling, without any set-off, deduction, counterclaim or withholding of any sum for whatever reason.

3.7 If you fail to make any payment due to us by the due date for payment ('the due date'), then we may charge you interest on the overdue amount at the rate of 5% per annum above the Bank of England's base lending rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount.

3.8 Without prejudice to any of MCWARE IT SOLUTIONS other rights, if the Customer fails to make any payment due to us under the Contract, we shall have the right to terminate or suspend the Contract in whole or part. If we elect to exercise our rights of termination or suspension under this sub-clause we shall do so by 5 days' notice in writing to the Customer and we shall be entitled to recover from the Customer all costs which we reasonably incur as a consequence of such suspension.

4. Delivery, Title and Risk

4.1 Delivery of the Goods will take place by MCWARE IT SOLUTIONS delivering the Goods to your nominated address.

4.2 We shall use reasonable endeavours to deliver Goods to you by the estimated delivery date, but any dates and times quoted for delivery are estimates only and unless otherwise agreed in writing, delivery times are not of the essence of the contract. MCWARE IT SOLUTIONS will not be liable for any loss or damage (howsoever arising) to the Customer should we be unable to deliver the Goods within the quoted period, where this is caused by circumstances beyond our reasonable control, such as delays caused by delivery companies or manufacturer lead times.

4.3 MCWARE IT SOLUTIONS are entitled to make partial deliveries by instalments and these Terms will apply to each partial delivery. If the Goods are to be delivered in instalments, each delivery will constitute a separate contract and failure by us to deliver any one or more instalments in accordance with these Terms will not entitle the Customer to treat the Contract as a whole as terminated.

4.4 Risk in respect of the Goods passes to the Customer at the time of delivery but the title in the Goods will not pass to the Customer until MCWARE IT SOLUTIONS have received payment in full of the price of the Goods and all other goods agreed to be sold or services to be provided by us to the Customer for which payment is then due. Risks include the risk of loss, breakage and all damage and all other risks.

4.5 Until title in the Goods has passed to the Customer, MCWARE IT SOLUTIONS will be entitled at any time to require the Customer to deliver up the Goods to us and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods.

4.6 Until title in the Goods has passed to the Customer, the Customer will hold the Goods as MCWARE IT SOLUTIONS' fiduciary agent and bailee, will not dispose of the Goods and will keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as our property.

4.7 Your right to possession of the Goods shall terminate immediately if you have a bankruptcy order made against you or if you make or know of any arrangements in respect of your actual or possible insolvency, liquidation, winding up or other arrangements with your creditors.

4.8 The Customer shall inspect the Goods on delivery and shall, within 48 hours of delivery, notify MCWARE IT SOLUTIONS of any alleged shortage in quantity, quality, damage or failure to comply with description or sample. If the Customer fails to notify us within such time the Goods shall be conclusively presumed to be in accordance with the Contract.

4.9 If the Goods are not in accordance with the Contract the sole remedy of the Customer shall be limited to the company making good any shortage by replacing such Goods or if MCWARE IT SOLUTIONS shall elect, by refunding proportionate part of the Price.

4.10 Where MCWARE IT SOLUTIONS' written quotation for the sale of the Goods or the Customer's written order for the Goods (if accepted by us) specifies installation of the Goods or we otherwise undertake any such installation then the Customer will complete all necessary works that may be required to receive the installation of the Goods including all necessary IT infrastructure and suitable electrical supply. If we are prevented or delayed from carrying out the installation through no fault of ours then we are entitled to charge the Customer at our then current prices for any additional works carried out by or on behalf of us to enable us to complete the installation and/or for compensation for any losses or costs incurred by us by reason of such delay.

4.11 Where the Goods include data communications equipment and data transmission speeds are given in relation to any of these Goods, these are at all times subject to any conditions of the applicable telecommunications utility company relating to the use of the relevant modem at the speeds indicated and to the capability of the Customer's equipment to which the Goods are linked.

4.12 MCWARE IT SOLUTIONS do not have control over broadband speeds at any locations. Broadband speed and quality is governed by the provider (e.g. BT), the distance from the Telephone Exchange, the quality of the line and the internal cable infrastructure. MCWARE IT SOLUTIONS hold no responsibility for any loss of connection, speed or quality relating to the broadband but will aim to assist the client to ensure they receive the highest possible broadband connection and service.

4.13 When computer equipment is connected to a public network, i.e. a switchboard or telephone network, certain regulations of the telecommunications provider apply. It is the sole responsibility of the Customer to ensure compliance with all such regulations.

5. Substitution and Changes

5.1 MCWARE IT SOLUTIONS Ltd reserve the right to make improvements, substitutions or modifications to any part of the Goods at any time prior to delivery, provided that such improvements, substitutions or modifications will not materially affect the performance of such Goods.

5.2 MCWARE IT SOLUTIONS Ltd further reserve the right to change the Delivery Date and increase the price of the Goods at any time prior to delivery, to reflect any increase in the cost which we have to incur.

5.3 No order which has been accepted by MCWARE IT SOLUTIONS may be cancelled by the Customer except with our prior written consent and the Customer shall indemnify us in full against all loss (including loss of profit) and costs (including the cost of all labour and materials used), damages, charges and expenses incurred by MCWARE IT SOLUTIONS as a result of such cancellation.

6. Warranty

6.1 The Goods supplied hereunder are warranted to be free from defects in materials and workmanship for a period of 90 days from the date of delivery by MCWARE IT SOLUTIONS. The Customer must within the said period of 90 days notify us in writing of any such defects and permit us to inspect the Goods as required by us. If the Customer does not so notify us then the Customer will not be entitled to reject the Goods and we will have no liability for such defect.

6.2 All Software is supplied to the Customer only under the Terms and Conditions of the applicable Licence Agreement (whether this has been signed and/or returned to MCWARE IT SOLUTIONS or not). Software packages must be returned unopened with the Software seals intact, otherwise they will be rejected. Software is warranted in accordance with the Terms of a Licence Agreement governing its supply.

6.3 It is the sole responsibility of the Customer to comply with all the Terms and Conditions of any Licence Agreement and the Customer is hereby notified that any failure to comply with such Terms and Conditions may result in the revocation of such Licence Agreement. MCWARE IT SOLUTIONS provide no warranty whatsoever with respect to Software included in any Goods supplied.

6.4 Unless otherwise stated in the manufacturer's documentation, all Goods carry a manufacturer's warranty. You should note that we adhere to individual manufacturer's guidelines in respect of acceptable deviation of quality of certain items. Therefore, we reserve the right not to accept Goods considered by you to be defective if the error or fault is within the manufacturer's accepted manufacturing tolerances. If in doubt please contact us directly.

6.5 The above warranty only applies where the Goods have been properly used in accordance with the relevant manufacturer's specifications and any instructions by MCWARE IT SOLUTIONS and does not apply to any Goods that have been repaired or modified by anybody other than us.

6.6 Where, as the part of a valid claim under Clause 6.1, Goods are to be returned to MCWARE IT SOLUTIONS, the expense, responsibility and risk of delivering these Goods to us shall be borne by the Customer. Where we reasonably determine that the Goods are not defective within the terms of the warranty, the Customer will pay us all costs of handling, transportation and repairs at our then prevailing rates.

6.7 If a valid claim is notified under clause 6.1 above then MCWARE IT SOLUTIONS may at its discretion repair or replace the Goods free of charge or refund the price of the Goods (or a proportionate part) in which case we will have no further liability to the Customer.

6.8 The Customer warrants and represents that the use by MCWARE IT SOLUTIONS of any data, materials or equipment supplied by the Customer for use by us, will not infringe the Intellectual Property Rights of any third party and the Customer will fully indemnify us in this respect.

6.9 All operating instructions, manuals and other documentation referencing the Goods and Services and supplied by MCWARE IT SOLUTIONS are subject to copyright and shall not be copied or disclosed to any third party without our prior

express written consent. No part of MCWARE IT SOLUTIONS' proprietary Software may be copied, reproduced or utilised in any form by any means without our prior express written consent.

6.10 Both parties hereby acknowledge the intellectual property rights of suppliers and manufacturers of the Goods we supply.

6.11 Provision of Services

If you purchase Services from us, then we shall use our skill and expertise to carry out the Services to a standard equivalent to that of a competent computer professional, and shall warrant our work as free from defects for a period of 30 days after completion. In particular, we cannot be held responsible for any fault or damage not caused by our technicians or our contracted agents. In the event of a claim arising relating to the level of skill and judgement applied in the course of providing Services, we reserve at our sole discretion the right to appoint an independent expert in the field to appraise the work carried out in the execution of the Service(s).

6.12 We accept no liability for equipment installed or configured by us when the equipment has subsequently been altered or configured by persons other than ourselves or our agents. Except as set out here, all other express or implied terms or warranties relating to the Services are excluded to the fullest extent permitted by law.

7. Our Liability

7.1 Subject to as expressly provided in these Terms and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law, but nothing in these Terms will affect the liability of MCWARE IT SOLUTIONS for any fraudulent misrepresentation.

7.2 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transaction (restrictions on Statements) Order 1976) the statutory rights of the Customer are not affected by these Terms.

7.3 The Customer accepts that in respect of the sale of the Goods, whilst MCWARE IT SOLUTIONS will endeavour to use its expertise and experience to advise the Customer, we are acting as a supplier only and it is the Customer's responsibility to ensure that the Goods will be suitable for its requirements and the Customer acknowledges that prior to the Contract it has fully and accurately advised us of its requirements, both present and anticipated, in respect of the Goods.

7.4 If MCWARE IT SOLUTIONS are unable, other than through the act or default of the Customer, within a reasonable time to repair or replace any defective Goods in accordance with the Warranty set out in these Terms and where such Goods are unusable due to such defect then, the Customer's only remedy is to reject such Goods and on their return to our premises the Customer is entitled to recover the price paid for such Goods provided the Customer notified such defect in accordance with these Terms.

7.5 Except in the case of death or personal injury caused by MCWARE IT SOLUTIONS' negligence, or liability for defective products under the Consumer Protection Act 1987, we will not have any Liability to the Customer for loss of profit or any indirect, special or consequential Loss of the Customer arising out of or in connection with the provision of any goods or services or any delay in providing or failure to provide any goods or services even if we had been advised of the possibility of such potential loss.

7.6 If MCWARE IT SOLUTIONS fail to provide the Services in accordance with our obligations hereunder, our total Liability for any Loss suffered by the Customer as a result of such failure will not exceed the charges paid by the Customer in respect of such Services.

7.7 MCWARE IT SOLUTIONS will have no liability under these Terms or otherwise to the Customer arising out of:

7.7.1 any loss or corruption of any documents, data, memory erasure of media stored on disk, whether total or partial howsoever arising by reason (in whole or in part) of the Customer's failure to maintain adequate back-up copies of all of its operating system software, application software, data files and other documentation;

7.7.2 any loss or corruption of any documents, data, memory erasure of media stored on disk, whether total or partial howsoever arising, including but not limited to loss which may occur, whilst installation, service or maintenance work is being carried out by or on behalf of MCWARE IT SOLUTIONS in accordance with these Terms or any other reason;

7.7.3 any act or omission of any third party telecommunication provider, or fault or failure of their equipment (including any prevention of any remote servicing facility in respect of the Equipment);

7.7.4 and if any damage to any of the program or data files of the Customer occurs then MCWARE IT SOLUTIONS' responsibility will be confined to assisting the Customer to restore the latest backup copy and installing application software made available on site by the Customer. If on site assistance is required to reconstruct the files then we will charge the Customer for the cost of such assistance at our then current rates.

8. Force Majeure

8.1 MCWARE IT SOLUTIONS shall not be liable to you or be deemed to be in breach of contract by reason of any delay in performing or any failure to perform any of our obligations in respect of the Goods or Services, if the delay or failure was due to any cause beyond our reasonable control; that is by reasons of Force Majeure. Without prejudice to the generality of the foregoing, Force Majeure shall be deemed to include, but not be limited to, act of God, fires, wars or industrial disputes.

9. General Provisions

9.1 Assignment

The Customer shall not assign its rights or obligations under the Contract except with the prior written consent of MCWARE IT SOLUTIONS.

9.2 Confidentiality

Except as expressly provided, neither party may at any time whether during or after the expiry of these Terms use or disclose the other party's Confidential Information and the Customer will take all reasonable steps to ensure that its employees are bound by the same obligations and that such obligations will continue beyond the termination of employment with the Customer. If MCWARE IT SOLUTIONS shall appoint any sub-contractor then we may disclose confidential information to such sub-contractor subject to such sub-contractor giving us an undertaking in similar terms to the provisions of this Clause. The foregoing obligations as to confidentiality shall survive any termination of the Contract.

9.3 Life Endangering Applications

The Goods are designed for standard commercial use and are not intended to be installed or used in hazardous or life-threatening environments or for potentially life-endangering applications including but not limited to environments or

applications involving safely critical systems in the nuclear industry or the control of aircraft in the air. The Customer undertakes not to use or supply the Goods for any of these purposes and agrees to indemnify and hold MCWARE IT SOLUTIONS harmless from and against all liabilities and related costs arising out of the use of any of the Goods for any of these purposes.

9.4 Waiver

Failure by either party at any time to enforce any of the provisions of the Contract shall not be construed as a waiver by that party of any such provisions nor in any way affect the validity of the Contract.

9.5 Severability

If any part of these Terms shall be deemed unlawful, void or unenforceable to any extent, then that provision shall be deemed to be severable from the Terms and shall not affect the validity and enforceability of any of the remaining provisions of the Terms.

9.6 Third Party

The parties hereby agree that a person who is not a party to this agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 (as amended, modified or supplemented from time to time) to enforce any of these Terms.

9.7 Data Protection

9.7.1 Each party will ensure that in the performance of its obligations under these Terms it will at all times comply with the Data Protection Act 1998.

9.7.2 The Customer consents to the processing by MCWARE IT SOLUTIONS of all the Customer's personal data (as the term 'personal data' is defined in the Data Protection Act 1998) for all purposes connected with these Terms.

9.7.3 The Customer acknowledges that any data transmitted over the Internet or through any other form of transmission including by telephony or other electronic means cannot be guaranteed to be free from the risk of interception even if transmitted in encrypted form and that MCWARE IT SOLUTIONS has no liability for the loss, corruption or interception of any such data.

9.8 Notices

All notices under these Terms must be in writing and will be effective only if given by either party to the other party at their last known principal place of business or such other address as that party has nominated, in writing, for that purpose.

9.9 Law and Jurisdiction

The Contract shall be subject to and interpreted in accordance with English law and the parties hereby irrevocably submit to the exclusive jurisdiction of the English Courts in all matter arising out of the Contract.

9.10 Contact information

"MCWARE IT SOLUTIONS Ltd" means a company incorporated in England, with company number 8497437, whose registered office is 25a High Street, Stokesley, North Yorkshire, TS9 5AD.