



NDG Technology Limited  
Unit 4 Saddlers Court  
Oakham Office Park  
Oakham, LE15 7GH

- **Definitions**
- 1.1. 'Company' means NDG Technology Limited incorporated in England under company number 09367162 whose Registered Office address is Cash's Business Centre, 1<sup>st</sup> Floor, 228 Widdrington Road, Coventry, West Midlands, CV1 4PB
- 1.2. 'Contract' means a contract between the Company and the Purchaser for the supply of goods and/or services subject to these terms and conditions
- 1.3. 'Delivery' includes performance, in the case of the Services and delivery of the Goods at the Purchaser's business in accordance with clause 7.
- 1.4. 'Deliverables' means the Deliverables set out in the Order
- 1.5. 'Goods' includes both hardware and (where the context permits) software.
- 1.6. 'Order' the Purchaser's order for Goods and/or Services as set out in the Purchaser's acceptance of the written Quotation (as amended by the parties)
- 1.7. 'Purchaser' means the person firm or company who purchases Goods and/or Services from the Company
- 1.8. 'Quotation' means the price quoted (current as at the date the quotation is given), together with details of the goods and/or services to be offered by the Company by way of specification and drawings
- 1.9. 'Services' the services, including the Deliverables supplied by the Company to the Purchaser as set out in the Specification.
- 1.10 'Specification' the description or specification of the Goods and/or Services provided in writing by the Company to the Purchaser.
- **2. Basis of Contract**
  - The Order constitutes an offer by the Purchaser to purchase the Goods and/or Services in accordance with these conditions.
  - The Order shall only be deemed to be accepted when the Company issues a written acceptance of the order ("The Order Confirmation / purchase order") at which point, and on which date the Contract shall come into existence.
  - The Contract constitutes the entire agreement between the parties. The Purchaser acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract.
  - Any samples, descriptive matter or advertising material issued by the Company are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Contract or have any contractual force.
  - These conditions apply to the Contract to the exclusion of any other terms that the Purchaser seeks to impose or incorporate, or which are implied by trade or custom practice or course of dealing.
  - NDG Technology limited will charge 3 x the average call charges by the remaining months remaining on the contract should the customer cancel.
- **3. Supply of Goods and/or Services**
  - The Company shall supply the Goods/ Services to the Purchaser in accordance with the Specification in all material respects.
  - The Company warrants to the Purchaser that the Services will be provided using reasonable care and skill
  - The Company shall have the right to make any changes to the Goods/and or Services where are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Goods and/or Services and the Company shall notify the Purchaser in any such event.
  - The Goods will be fit for the general purpose for which they will be manufactured, and no warranty is given express or implied as to any other purpose;
  - No warranty is given whether express or implied as to the Goods being fault free.
- **4. Purchaser's obligations**
- 4.1 The Purchaser shall:
  - 4.1.1 Ensure that the terms of the Order are complete and accurate;
  - 4.1.2 co-operate with the Company and its agents' officers and employees at all times;
  - 4.1.3 provide the Company, its agents officers and employees unhindered and free access to enable the Company to fulfil its contractual obligations;
  - 4.1.4 provide the Company with such information and materials as the Company may require in order to supply the Goods and/or the Services;
  - 4.1.5 adequately prepare its premises in readiness of the supply of the Goods and/or the Services;
  - 4.1.6 obtain and maintain any necessary licences, permissions and consents (including import and export licences) save for those expressly agreed to be provided by the Company;



NDG Technology Limited  
Unit 4 Saddlers Court  
Oakham Office Park  
Oakham, LE15 7GH

- 4.1.7 keep and maintain all materials, equipment, documents, Goods and other property of the Company at the Purchaser's premises in safe custody at its own risk;
- **5. Confidentiality**
- 5.1 A party (Receiving Party) shall keep in strict confidence all technical or commercial, know how, specification, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (Disclosing Party), its employees, agents or sub-contractors and other confidential information concerning the Disclosing Party business, products or services which the Receiving Party may obtain. The Receiving Party will not use or take advantage of it without the Disclosing Party's agreement. This does not apply to information known to the Receiving Party before it was disclosed in connection with a Contract, or which is in the public domain or which the Receiving Party is ordered to disclose by a court order or another of another administrative body of competent jurisdiction.
- **6. Price and Payment**
- 6.1 Prices are exclusive of VAT, freight, carriage, packing materials, insurance, any applicable taxes and duties, travelling and subsistence, all of which (where applicable) are payable by the Purchaser in addition.
- 6.2 Prices are correct at the date any Quotation is given. The Company reserves the right to adjust the price (upwards) in respect of matters arising outside its control, including but not limited to any direct or indirect increase in any relevant foreign exchange rate or in the cost of labour, materials, handling, manufacture, supply or transport, or such costs as may be incurred by the Company in acquiring Supplies or in complying with legal obligations.
- 6.3 All Orders are subject to a minimum delivery charge of £15.00.00. Delivery will normally be made to the Purchaser's usual place of business or to any other address agreed between the parties in writing.
- 6.4 Where Services are to be provided on a 'Time and Materials' basis the Company does not (unless expressly stated) warrant that it will be sufficient to complete the task(s) specified. The Company reserves the right to increase its standard daily fee rates. The Company will give the Purchaser notice in writing of any proposed increased 28 days before the increase is due to take effect.
- 6.5 All Orders are payable in advance, unless otherwise agreed by the Company. The price shall be paid as follows:
- 6.5.1 By a deposit of 30% of the total due plus VAT on issuance of the Order Confirmation; and
- 6.5.2 The balance of 70% of the price plus VAT (and the cost of packaging and carriage) on Delivery of the Goods.
- 6.6 Where credit terms are agreed, payment is due within 30 days of invoice; provided that the Company reserves the right to withdraw the credit facility at any time and request cleared funds. Where credit terms are extended, the directors/s/partners of the Purchaser personally guarantee any outstanding balance. Discounts only apply where agreed in writing by the Company.
- 6.7 All amounts due are exclusive of VAT unless otherwise stated
- 6.8 Without limiting any other remedy or right the Company may have if the Purchaser fails to make any payment due to the Company under the Contract by the due date (s) for payment (Due Date) the Company shall have the right:
- 6.8.1 to charge interest at the rate of 3% per annum above the then current base rate of National Westminster Bank PLC accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment and compounding quarterly and/or
- 6.8.2 the Company may withhold or suspend supply of Goods or services in respect of any Contract, and
- 6.8.3 all sums owing by the Purchaser to the Company on any account shall be due and payable immediately; and
- 6.8.4 the Purchaser will indemnify the Company against all loss damage costs and expenses (including legal expenses on the indemnity basis) incurred by the Company; and
- 6.8.5 the Company may terminate any contract between the Purchaser and the Company; if the Company does so, the respective rights and liabilities under such other contracts shall be as if each such contract had been lawfully terminated by the Company for breach by the Purchaser; and/or
- 6.8.6 the Company may apportion or apply any part-payment made by the Purchaser to any other sums owed by the Purchaser to the Company.
- 6.9 The Purchaser shall not be entitled to make any deduction or withholding from any sums due
- 6.9.1 The purchaser understands that the hosted license cost may be increase due to by the company by a maximum of 5%
- **7. Delivery and Installation**
- 7.1 The Company shall use all reasonable endeavours to meet performance/ delivery dates, but any such dates shall be estimates only and time shall not be of the essence unless expressly agreed by the parties in writing.
- 7.2 The Company shall inform the Purchaser when any part or all of the Goods is ready for delivery, and the Purchaser shall inform the Company of the location for delivery if the same does not appear on or differs from the address stated in Order Confirmation. If the Purchaser fails to give to the Company instructions for delivery within twenty-one (21) days of such notification by the Company, the Company may without further reference to the Purchaser arrange for storage of the Goods. Charges for storage shall be paid by the Purchaser and the Goods shall be subject to a lien for such storage charges. The Company may also invoice for the Goods, and payment shall be due as if delivery had been made.



NDG Technology Limited  
Unit 4 Saddlers Court  
Oakham Office Park  
Oakham, LE15 7GH

- 7.3 Delivery shall be made during normal working hours (excluding public holidays). If the Purchaser requires delivery to be made outside such times, an additional charge shall be payable. The Company reserves the right to deliver in more than one delivery.
- 7.4. The Company shall be entitled to make partial deliveries or deliveries by instalments. Each instalment shall be considered a separate Contract to which all the provisions of these Conditions shall apply.
- Damage, Shortage or Loss in Transit
- 7.5. The Purchaser acknowledges that it is its responsibility to check all deliveries before signing for them, and that the Company is entitled to treat the Purchaser's signature for delivery of all Goods as conclusive proof that all such Goods as are signed for have in fact been delivered and accepted.
- 7.6. The Company may accept responsibility for damage, shortage or loss in transit if:
  - 7.6.1 notified to the Company and the carrier (if not delivered by the Company) within three days of receipt or proposed date of receipt of the Goods by the Purchaser; and (where applicable)
  - 7.6.2 the Goods have been handled by the Purchaser in accordance with the Company's or the carrier's terms and conditions of carriage or handling stipulations.
- 7.7 Where the Company accepts responsibility under this Clause, it shall, at its sole discretion replace or repair (as the case may be) any such Goods proved to the Company's reasonable satisfaction to have been lost or damaged in transit.
- **8. Intellectual Property Rights**
- 8.1. All Intellectual property rights in any documents, software or other Deliverables arising in connection with the Goods and/or Services shall be owned by the Company unless otherwise expressly stated or agreed.
- 8.2 The Purchaser acknowledges that in respect of any third-party intellectual property rights the Purchaser's use of the same is conditional on the Company obtaining a written licence from the relevant licensor on such terms as will entitle the Company to license such rights to the Purchaser.
- 8.3. Where a Contract specifies that the Purchaser is to have 'company-wide licence', the Purchaser has non-exclusive, non-transferable, perpetual, worldwide, royalty-free licence to use licence and the software/hardware to which it relates within the Purchaser's own business (including that of any holding, subsidiary, or associated company), but may not otherwise sublicense, transfer, or otherwise dispose of the right to use Deliverables. Copyright statements and/or confidentiality notices on any Deliverable must be faithfully reproduced on all copies.
- 8.4 The Purchaser shall not sub license, adapt, modify, copy, reverse engineer or de-compile any software licensed to it.
- 8.5. Subject to the above, where software is supplied and the Purchaser has been furnished with a developer's software licence, the same must be signed and returned to the Company within 7 days or as otherwise specified in the said licence unless the said licence is a "shrink wrap" licence. If the Purchaser fails to sign and return the said licence, the Company may withhold release of the software; or, demand return of it.
- 8.6 The Purchaser warrants and undertakes to at all times comply with any licence issued to it and without limitation:
  - 8.6.1 to use the software/hardware only on equipment or Goods agreed by the parties;
  - 8.6.2 not to remove, change or tamper with any copyright notice, or logo
- 8.7 the Company may terminate the Licence forthwith if the Purchaser fails or has failed to comply with any of these Terms.
- 8.8. The Purchaser warrants that, for the purpose of performing the Services and delivery/installation of the Goods under a Contract:
  - 8.8.1. it has all necessary rights to use any specification, design, instructions, content, or other material and information (together, 'Purchaser Materials') provided to the Company;
  - 8.8.2. use by the Company of any materials used/owned by the Purchaser shall not cause the Company to infringe any rights (including Intellectual Property Rights) of or belonging to any third party; and
  - 8.8.3. the Purchaser will indemnify the Company in full against all costs, charges, claims and expenses and damages incurred or awarded directly or indirectly against the Company as a result of any alleged or actual infringement of third party rights resulting from use by Purchaser of the Company's or third parties intellectual property rights (including but not limited to the costs of defending such a claim on an indemnity basis).
- **9. Limitation of Liability- THE PURCHASER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**
- 9.1. Nothing in this clause shall limit or exclude the Company's liability for:
  - 9.1.1 death or personal injury caused by its negligence or the negligence of its agents or employees;
  - fraud or fraudulent misrepresentation.
- 9.2 Subject to clause 9.1:
  - 9.2.1 The Company shall not be liable to the Purchaser whether in contract, tort (including negligence) breach of statutory duty or otherwise for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
  - 9.2.2 The Company's total liability to the Purchaser in respect of all losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise shall not exceed the value of the Goods



NDG Technology Limited  
Unit 4 Saddlers Court  
Oakham Office Park  
Oakham, LE15 7GH

- Except as set out in these conditions all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law excluded from the Contract.
- This clause 9 shall survive the termination of the Contract.
- **10. Termination and Consequences**
- 10.1. Without limiting the other rights and remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
  - 10.1.1 Either party commits a material breach of the Contract and has failed to rectify the breach within 14 days of a written requirement to do so;
  - 10.1.2 the other party suspends or threatens to suspend payment of its debts or is unable to pay its debts as they fall due within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner whom any of the foregoing apply;
  - 10.1.3 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company);
  - 10.1.4 an application is made to court or an order is made for the appointment of an administrator or notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
  - 10.1.5 a floating charge holder over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
  - 10.1.6 the other party (being an individual) is the subject of a bankruptcy petition;
  - 10.1.7 the other party ceases or threatens to cease carrying on its business;
  - 10.1.8 any event occurs, or proceeding is taken with respect to the other party in any jurisdiction which has a similar or equivalent effect as any of the events mentioned above.
- 10.2. Upon termination of the Contract for whatever reason:
  - 10.2.1 The Purchaser shall pay any and all amounts outstanding to the Company immediately;
  - 10.2.2 the Purchaser shall return to the Company all Goods which have not been paid for in full. If the Purchaser fails to do so then the Company may enter the Purchaser's premises and take possession of them. Until they have been returned the Purchaser shall be solely responsible for their safekeeping and will not use them for any purpose connected with the Contract;
  - 10.2.3 all accrued rights and remedies obligations and liabilities of the parties as at the expiry or termination shall not be affected including the right to claim damages in respect of any breach of the Contract which existed at or before the dated or termination or expiry; and
  - 10.2.4 clauses which are expressly or by implication have effect after termination shall continue in full force and effect.
- **11. Title to the Goods and the Passing of Risk**
- 11.1. Risk in Goods shall pass to the Purchaser upon delivery by the Company or its carriers to the Purchaser or his agent and the Company shall not be liable for any loss or damage to the Goods from the time that the Goods are so delivered.
- 11.2. Notwithstanding delivery, installation, acceptance and passing of risk, title to any Goods to be sold to the Purchaser shall not pass to the Purchaser and shall be retained by the Company until full payment of all monies due on any account has been received by the Company from the Purchaser.
- 11.3. Until such time as title in Goods has passed to the Purchaser the Purchaser shall, subject to the Company's rights hereunder
  - 11.3.1 hold the Goods as the Company's fiduciary agent and be entitled to use the same in the ordinary course of the Purchaser's business; but shall not sell or part with possession thereof;
  - 11.3.2 store the Goods separately from any goods belonging to the Purchaser or any third party, and keep the Goods clearly marked and identifiable as being the property of the Company;
  - 11.3.3 cause to be added to its audited accounts for each year a note that Goods supplied by the Company are subject to retention of title and shall be the property of the Company until full payment of has been made; and
  - 11.3.4 insure such Goods to their full replacement value naming the Company as the loss payee until all payments to the Company have been made; the Purchaser shall forthwith upon request provide the Company with a certificate of such insurance.
- 11.4. the Company:
  - 11.4.1. shall be entitled to enter the Purchaser's premises upon reasonable notice to verify the Purchaser's compliance with the preceding clause;
  - 11.4.2. shall be entitled to repossess at any time any Goods in which title remains vested in the Company and for this purpose at any time and without notice the Company may enter upon any premises in which the Goods or any part thereof are installed, stored or kept, or are reasonably believed so to be;
  - 11.4.3. shall be entitled to seek a court injunction or equivalent judicial order under the applicable law of this Agreement to prevent the Purchaser from selling, transferring or otherwise disposing of the Goods.



NDG Technology Limited  
Unit 4 Saddlers Court  
Oakham Office Park  
Oakham, LE15 7GH

- **12. Company Staff**
- 12.1. The Company's staff are its most valuable asset. If the Purchaser or a third party were to engage or try to engage them without the Company's agreement, the Company would suffer serious loss. The Purchaser agrees that it will not engage or try to engage the Company's staff or introduce them to any third party other than in good faith and without any view to their engagement by a third party.
- 12.2. The Purchaser further agrees that if it does engage or try to engage (or if a third party does so following introduction by the Purchaser) any member or former member of the Company's staff with whom the Purchaser has had material contact in the course of dealings with the Company within the immediately preceding 12 months, the Purchaser will pay the Company by way of liquidated damages such sum as represents 100% of the annual salary (or other annualised amount last payable by the Company) for the individual in question, which both parties agree is a fair and reasonable pre-estimate of the likely loss the Company would suffer.
- **13. General**
- **13.1. Publicity**
- The Company may include reference to the fact that it is providing Supplies to the Purchaser in its publicity material, in terms to be approved by the Purchaser (such approval not to be unreasonably withheld). Subject thereto, except with the written consent of the other party, neither party shall make any press announcements or publicise this Agreement in any way.
- **13.2. Severability**
- If any of these terms is held by any Court or other competent authority to be wholly or partially void, invalid, or unenforceable such term shall be removed or replaced by such term as the court deems reasonable in all the circumstances.
- **13.3. Waiver**
- Failure, delay or neglect by either party to enforce at any time any of the provisions hereof shall:
  - 13.3.1. not be construed nor shall be deemed to be a waiver of its rights hereunder
  - 13.3.2. not in any way affect the validity of the whole or any part of any contract under these terms
  - 13.3.3. not prejudice its rights to take subsequent action.
- **13.4 Contracts (Rights of Third Parties) Act 1999**
- No person who is not a party to the Contract has any rights hereunder
- **13.5 Force Majeure**
- 'Force Majeure Event':
  - 13.5.1 For the purpose of the Contract a Force Majeure Event means an event beyond the reasonable control of the Company including but not limited to strikes, lock out, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, accident, breakdown of plant or machinery, terrorism, fire, flood, storm or default of suppliers or sub-contractors.
  - 13.5.2 The Company shall not be liable to the Purchaser as a result of any delay or failure to perform its obligations under the Contract as a result of a Force Majeure Event.
  - 13.5.3 If the Force Majeure Event prevents the Company from providing any of the Goods or Services for more than five working days the Company shall without limiting its other rights and remedies have the right to terminate this Contract immediately by giving written notice to the Purchaser.
- **13.6 Assignment and subcontracting**
- The Company may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner or all of its obligations under the Contract to any third party or agent.
- **13.7 No partnership**
- Nothing in the Contract is intended or shall be deemed to constitute a partnership or joint venture of any kind between any of the parties.
- **13.8. Headings**
- The headings of these terms are inserted for convenience of reference only and are not intended to be part of the terms or to affect their meaning or interpretation.
- **13.9 Notices**
- Any notice to be given by either party to the other shall be in writing and may be sent by recorded delivery to the address of the other and shall be deemed to be served 2 days following the date of posting.
- **13.10 Time**
- Time (other than for payment) shall not be of the essence unless expressly made so by notice in writing.
- **13.11. Law**
- These terms and any contract made under them shall be construed in accordance with English Law, and the English courts shall have exclusive jurisdiction in relation to all matters arising out of these Conditions.