

## IBEX Terms and Conditions for the Supply of Services

## Terms and Conditions of Sale

(V2.01)

*These conditions apply to the supply of goods. Where services are supplied the "IBEX Terms and Conditions for the Supply of Services" may apply instead.*

Please read these Terms carefully, as they set out our and your legal rights and obligations in relation to the Goods that we sell.

### 1. Definitions and interpretation

#### 1.1 In these Terms:

**"Affiliate"** means a company, firm or individual that Controls, is Controlled by, or is under common Control with the relevant company or firm;

**"Business Day"** means any week day, other than a bank or public holiday in England;

**"Business Hours"** means between 09:00 and 17:30 on a Business Day;

**"Confidential Information"** means any information supplied (whether supplied in writing, orally or otherwise) by one party to the other party marked as "confidential", described as "confidential" or reasonably understood to be confidential;

**"Contract"** means a contract between the parties for the sale and supply of Goods entered into in accordance with Clause 3;

**"Control"** means:

- (a) the legal power to directly or indirectly control the management of a company, firm or other entity;
- (b) the right to select the majority of the directors (or their equivalent) of a company, firm or other entity; and/or
- (c) ownership of more than 50% of the voting shares in a company;

and **"Controlled"** will be construed accordingly;

**"Customer"** means the customer for the Goods as specified in a Proposal or in the Supplier's order confirmation;

**"Force Majeure Event"** means an event, or a series of related events, that is outside the reasonable control of the party affected (including power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

**"Goods"** means the Goods or Products which may be or are purchased by the Customer from the Supplier under these Terms (details of which may be set out in a Proposal);

**"Intellectual Property Rights"** means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and the "intellectual property rights" referred to above include copyright and related rights, moral rights, database rights, confidential information, trade secrets, know-how, business names, trade names, domain names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

**"Prices"** means the Supplier's standard list prices for the Goods as sent by the Supplier to the Customer or published on the Supplier's website from time to time or as specified in a Proposal;

**"Proposal"** means any proposal or quotation document issued by the Supplier to the Customer detailing the Goods being supplied;

**"Supplier"** means IBEX Technology Ltd, a limited company incorporated in England and Wales (registration number 5909842); and

**"Terms"** means these terms and conditions of supply.

#### 1.2 In these Terms, a reference to a statute or statutory provision includes a reference to:

- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
- (b) any subordinate legislation made under that statute or statutory provision.

#### 1.3 The Clause headings do not affect the interpretation of these Terms.

#### 1.4 In these Terms, "persons" include companies, partnerships, limited liability partnerships, unincorporated associations and trusts.

#### 1.5 The ejusdem generis rule is not intended to be used in the interpretation of these Terms; it follows that a general concept or category utilised in these Terms will not be limited by any specific examples or instances utilised in relation to such a concept or category.

#### 1.6 Where the Supplier is not the manufacturer the Supplier relies on the specifications supplied by the manufacturer.

#### 1.7 The Customer acknowledges that no Intellectual Property Rights concerned with the Goods shall pass to

the Customer unless specifically stated in a Proposal.

- 1.8 Words in the singular include the plural and in the plural include the singular.

## **2. These Terms**

- 2.1 These Terms and any Proposal or Order Confirmation contain the only conditions upon which the Supplier will deal with the Customer for the sale of Goods, and they govern all Contracts to the exclusion of all other terms and conditions.
- 2.2 Without prejudice to the generality of Clause 2.1, any reference to any of the Customer's terms and conditions in any document forming part of or evidencing a Contract will not have the effect of incorporating any such terms and conditions into the Contract, nor of forming any other contract between the parties for the purchase of the Goods.
- 2.3 The Customer hereby waives any right it might otherwise have to rely upon the Customer's terms and conditions referred to in Clause 2.2 and the other terms and conditions referred to in Clause 2.1.

## **3. Contracts**

- 3.1 Each order for Goods given by the Customer to the Supplier will be deemed to be an offer by the Customer to purchase Goods from the Supplier subject to these Terms.
- 3.2 In order for a Contract to come into force:  
(a) the Customer must submit an order to the Supplier; and  
(b) the Supplier must send to the Customer an order confirmation or invoice;  
and upon the issue of an order confirmation or invoice by the Supplier a Contract will come into force between the parties.
- 3.3 The Supplier may cancel a Contract insofar as it relates to particular Goods, by giving to the Customer written notice of cancellation at any time before delivery of those Goods, if a Force Majeure Event prevents the delivery of the Goods under the Contract on the agreed date or during the agreed period.
- 3.4 The Supplier may increase the Price of Goods under a Contract, by giving to the Customer written notice of the increase at any time before delivery of those Goods, if there is a material increase in the cost to the Supplier of obtaining or delivering the Goods, providing that any increase under this Clause must not exceed the amount of the increase in cost to the Supplier.

## **4. Delivery**

- 4.1 Unless otherwise agreed:  
(a) all Goods will be delivered by the Supplier to the Customer's premises;  
(b) the Supplier will be responsible for arranging transport and insurance for the Goods; and  
(c) risk in the Goods will pass from the Supplier to the Customer when the Goods are delivered to the Customer or if the Goods are collected by the Customer or their agent when the Goods are collected.  
(d) If the Goods are lost or damaged in transit and before Delivery the Supplier will, at its sole discretion, refund the cost of, or repair or replace free of charge, the lost or damaged Goods.
- 4.2 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate Contract and failure by the Supplier to deliver any one or more of the instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.
- 4.3 Any date or dates for the delivery of the Goods agreed by the parties as part of a Contract will not be of the essence of the Contract.

## **5. Title**

- 5.1 Legal and equitable title to the Goods will pass from the Supplier to the Customer upon the later of:  
(a) delivery of the Goods; and  
(b) receipt by the Supplier of all amounts due from the Customer to the Supplier.
- 5.2 Until title to the Goods has passed to the Customer:  
(a) the Customer will hold the Goods as fiduciary agent and bailee of the Supplier;  
(b) the Customer will: (i) store the Goods in a secure, safe, dry and clean environment separately from other Goods and goods; (ii) ensure that the Goods are easily identifiable as belonging to the Supplier; (iii) not deface, destroy, alter or obscure any identifying mark on the Goods or their packaging; (iv) ensure that no charge, lien or other encumbrance is created over the Goods; (v) deliver up the Goods to the Supplier upon demand.
- 5.3 The Supplier shall be entitled without further notice to inspect or recover possession of any Goods to which it retains title; and the Customer grants to the Supplier and its employees and agents an irrevocable licence to enter at any time, with vehicles if necessary, any premises where the Goods are or may be situated for the purpose of inspecting or removing any such Goods the title in which has remained with the Supplier.
- 5.4 The Supplier may bring an action for the Prices of Goods, and any other amounts due under a Contract, notwithstanding that title to the Goods has not passed to Customer.

## **6. Customers obligations**

- 6.1 The Customer will not:
- (a) represent to any person that it is sole or exclusive distributor of the Supplier;
  - (b) pledge or purport to pledge the Supplier's credit;
  - (c) commit or purport to commit the Supplier to any contracts; or
  - (d) otherwise incur any liability or potential liability on behalf of the Supplier.
- 6.2 The Customer will not take any action or do any thing which would or would be likely to damage the reputation or goodwill of the Supplier, or bring the Supplier into disrepute.
- 6.3 The Customer will not without the Supplier's prior written consent make or give any promises, representations, warranties or guarantees:
- (a) on behalf of the Supplier; or
  - (b) in relation to the Goods (other than those set out in a Contract in relation to the Goods or otherwise mandatory under applicable law).
- 6.4 Without prejudice to the Supplier's obligations under Clause 8, the Customer must comply with all applicable laws, rules and regulations relating to, and must obtain all licences, permits and approvals required in relation to:
- (a) the marketing, promotion and advertising of the Goods; and
  - (b) import, export, distribution, sale, supply and delivery of the Goods.
- 6.5 The Customer will not without the Supplier's prior written consent disassemble or reverse engineer any of the Goods except as mandated by applicable law.

## **7. Prices and payment**

- 7.1 The Supplier may issue an invoice for the Prices under a Contract to the Customer at any time after the Customer has placed an order.
- 7.2 The Customer will pay the Prices to the Supplier on receipt of an invoice issued in accordance with Clause 7.1 according to the stated terms.
- 7.3 All amounts payable under a Contract are exclusive of all value-added and other taxes and duties which will be payable by the Customer (except for taxes payable on the Supplier's net income, which will be payable by the Supplier).
- 7.4 Prices must be paid by bank transfer or by cheque (using such payment details as are notified by the Supplier to the Customer from time to time).
- 7.5 If the Customer does not pay any amount properly due to the Supplier under or in connection with a Contract, the Supplier may:
- (a) charge the Customer interest on the overdue amount at the rate of 8% per year above the base rate of HSBC Bank Plc from time to time (which interest will accrue daily until the date of actual payment, be compounded quarterly, and be payable on demand); or
  - (b) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.
- 7.6 The Supplier reserves the right to suspend manufacture and / or deliveries in the event of any payment not being made when due (except where it is reasonably disputed by the Customer in good faith) or if the Supplier at any time reasonably considers that the financial circumstances of the Customer have ceased to justify the terms stated.
- 7.7 If the Supplier is unable to deliver all the Goods ordered by the Customer for reasons beyond the Supplier's control the Customer shall pay for such of the Goods as are delivered.

## **8. Warranties**

- 8.1 The Supplier warrants that:
- (a) the Supplier has (or will have at the relevant time) the right to sell the Goods;
  - (b) the Goods are free from any charge or encumbrance, subject to Clause 5 and subject to any other charge or encumbrance disclosed or known to the Customer before the relevant Contract is made;
  - (c) the Customer shall enjoy quiet possession of the Goods, subject to the rights referred to in Clause 8.1(b);
  - (d) the Goods correspond to any description of the Goods supplied by the Supplier to the Customer;
- 8.2 The Supplier guarantees at its' discretion either to refund the cost of, replace free of charge, or repair any of the Goods found to its satisfaction to be defective owing to faulty design, materials or workmanship within 12 months of the date of delivery, provided that in the case of Goods or components not of the Supplier's manufacture, its liability under this clause shall in no circumstances extend beyond any corresponding liability of the manufacturer to the Supplier of such Goods and components.
- 8.3 All of the parties' warranties, liabilities and obligations in respect of the subject matter of each Contract are expressly contained in these Terms or elsewhere in the relevant Contract. Subject to Clause 12.1 and to the maximum extent permitted by applicable law, no other terms concerning the subject matter of a Contract will be implied into that Contract or any related contract.

- 8.4 The Supplier shall be under no liability under the above warranty (or any other warranty, Condition or guarantee) if the total price for the Goods has not been paid by the due date for payment.
- 8.5 The Customer relies on its own skill and judgment as to the sufficiency, capacity and performance of the Goods and as to their suitability for any purposes for which the Customer may require them.
- 9. Complaints, credits and replacements**
- 9.1 The Supplier will promptly and in any event within 10 Business Days, fully respond to all reasonable enquiries and complaints by the Customer relating to the quality, performance and durability of the Goods.
- 9.2 If Goods do not comply with any warranty given by the Supplier under a Contract, the Customer may with the prior agreement of the Supplier return those Goods for either (at the option of the Supplier):
- (a) a full credit of the price paid to the Supplier for such Goods (excluding original delivery and related charges);
  - (b) replacement Goods; or
  - (c) repair;
- 9.3 The Customer shall not return any of the Goods to the Supplier without the Supplier's written consent and the Supplier shall be under no liability whatsoever for any Goods returned by the Customer without such consent.
- 9.4 Goods returned to the Supplier must be properly packed, insured and returned within 30 Business Days of receipt of the Goods by the Customer. Any Goods returned in contravention of this Clause will not be the subject of any credits or replacements and the Customer will continue to be liable for payment of the Price in respect of such Goods.
- 10. Recycling**
- 10.1 Where the Customer is a business the costs of collection, treatment, recovery and recycling of products purchased from the Supplier shall be borne by the Customer.
- 11. Software**
- 11.1 The Customer shall not copy (other than for normal equipment operation), reproduce, translate, adapt, vary or modify software or communicate any part of it to a third party without the prior written consent of the Supplier, unless permitted in the terms of a Proposal.
- 11.2 Where the Supplier designs new software or adapts existing software for the Customer the Supplier will author and test the software to the practical limits of the time allocated to the Customer's project. The Supplier can and will only take responsibility for the update and correction of errors or bugs within the software and excludes all liability for any expense howsoever incurred by the Customer in the upgrading of existing software. The Customer is advised to exhaustively test all software supplied by the Supplier before using the software for any commercial or critical purposes.
- 11.3 Software Goods may be subject to separate licence terms which the Customer should check before placing an order.
- 12. Limitations and exclusions of liability**
- 12.1 Nothing in the Contract will:
- (a) limit or exclude the liability of a party for death or personal injury resulting from negligence;
  - (b) limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party;
  - (c) limit or exclude any liability of a party under Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;
  - (d) limit any liability of a party in any way that is not permitted under applicable law; or
  - (e) exclude any liability of a party that may not be excluded under applicable law.
- 12.2 The limitations and exclusions of liability set out in this Clause 12 and elsewhere in the Contract:
- (a) are subject to Clause 12.1;
  - (b) govern all liabilities arising under the Contract or in relation to the subject matter of the Contract, including liabilities arising in contract, in tort including negligence and for breach of statutory duty; and
  - (c) will limit and exclude the liability of the parties under the express indemnities set out the Contract.
- 12.3 The Supplier will not be liable in respect of any loss of profits, income, revenue, use, production or anticipated savings. The limitations and exclusions of liability in this Clause 12.3 will apply whether or not the liability in question arises out of any reckless, deliberate, personal and/or repudiatory conduct or breach of contract.
- 12.4 The Supplier will not be liable for any loss of business, contracts or commercial opportunities. The limitations and exclusions of liability in this Clause 12.4 will apply whether or not the liability in question arises out of any reckless, deliberate, personal and/or repudiatory conduct or breach of contract.
- 12.5 The Supplier will not be liable for any loss of or damage to goodwill or reputation.
- 12.6 The Supplier will not be liable in respect of any loss or corruption of any data, database or software.

- 12.7 The Supplier will not be liable in respect of any special, indirect or consequential loss or damage.
- 12.8 The Supplier will not be liable for any losses arising out of a Force Majeure Event.
- 12.9 The Supplier's aggregate liability under the Contract will not exceed the total amount paid or payable by the Customer to the Supplier under the Contract.
- 12.10 The Supplier shall not be liable for the loss of, or damage to, any software programs or data occurring during or as the consequence of, the repair or upgrade of any of the Goods, whether under warranty or not.

### **13. Force majeure**

- 13.1 Where a Force Majeure Event gives rise to a failure or delay in either party performing its obligations under a Contract (other than obligations to make payment), those obligations will be suspended for the duration of the Force Majeure Event.
- 13.2 A party who becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in performing its obligations under a Contract, will:
- (a) forthwith notify the other; and
  - (b) will inform the other of the period for which it is estimated that such failure or delay will continue.
- 13.3 The affected party will take reasonable steps to mitigate the effects of the Force Majeure Event.

### **14. Contract term and termination**

- 14.1 Each Contract will come into force in accordance with Clause 3, and will continue in force until the earlier of:
- (a) the later of completion of: (i) delivery of all Goods; and (ii) the receipt by the Supplier of all amounts due to the Supplier under the Contract; and
  - (b) the termination of the Contract in accordance with the provisions of this Clause.
- 14.2 A Contract may be terminated in the following circumstances:
- (a) either party may terminate a Contract immediately by giving written notice to the other party if the other party commits any material breach of any term of the Contract;
  - (b) the Supplier may terminate any Contract immediately by giving written notice to the Customer if the Customer fails to pay to the Supplier any amount due under any Contract by the due date for payment; and
  - (c) the Supplier may terminate any Contract immediately by giving written notice to the Customer if the Customer fails to accept delivery of the Goods on the date agreed in the relevant Contract.
- 14.3 Either party may terminate any Contract immediately by giving written notice to the other party if:
- (a) the other party: (i) is dissolved; (ii) ceases to conduct all (or substantially all) of its business; (iii) is or becomes unable to pay its debts as they fall due; (iv) is or becomes insolvent or is declared insolvent; or (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
  - (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
  - (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under the Contract);
  - (d) (where that other party is an individual) that other party dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.

### **15. Effects of termination**

- 15.1 Upon termination of a Contract, all the provisions of that Contract will cease to have effect, save that the following provisions of these Terms will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses 1, 5, 6.3 to 6.5, 7.5, 9, 10, 11, 12, 15, 16 and 18.
- 15.2 Termination of a Contract will not affect either party's accrued rights (including accrued rights to be paid and accrued rights to a remedy for breach of condition or warranty) as at the date of termination.
- 15.3 After the termination of all Contracts between the parties, the Customer will within 30 days following receipt of a written request from the Supplier:
- (a) return to the supplier or dispose of as the Supplier may instruct all documents and materials containing Confidential Information of the Supplier (excluding any documents or materials stored as part of computer backup data); and
  - (b) irrevocably delete from its computer systems all Confidential Information of the Supplier (excluding any Confidential information stored as part of computer backup data).
- 15.4 After the termination of all Contracts between the parties, the Supplier will within 30 days following receipt of a written request from the Customer:
- (a) return to the supplier or dispose of as the Customer may instruct all documents and materials containing Confidential Information of the Customer (excluding any documents or materials stored as part of computer backup data); and

- (b) irrevocably delete from its computer systems all Confidential Information of the Customer (excluding any Confidential information stored as part of computer backup data).

## **16. Confidentiality**

- 16.1 Each party will keep confidential the Confidential Information of the other party, and will not disclose that Confidential Information except as expressly permitted by this Clause.
- 16.2 Each party will protect the confidentiality of the Confidential Information of the other party using at least reasonable security measures.
- 16.3 The Confidential Information of a party may be disclosed by the other party to its employees and professional advisers, provided that each recipient is legally bound to protect the confidentiality of the Confidential Information.
- 16.4 These obligations of confidentiality will not apply to Confidential Information that:
  - (a) has been published or is known to the public (other than as a result of a breach of a Contract);
  - (b) is known to the receiving party, and can be shown by the receiving party to have been known to it, before disclosure by the other party; or
  - (c) is required to be disclosed by law, or by an order (binding upon the relevant party) of a competent governmental authority, regulatory body or stock exchange.

## **17. Notices**

- 17.1 Any notice given under a Contract must be in writing (whether or not described as "written notice" in these Terms) and must be delivered personally, sent by pre-paid first class post, or sent by fax, for the attention of the relevant person, and to the relevant address or fax number given below or as notified by one party to the other in accordance with this Clause.

The Supplier:  
IBEX Technology Ltd, Aberdeen House, Vicarage Hill, Westerham, Kent, TN16 1AY, England

The Customer:  
The addressee, address and fax given in the Proposal or displayed on the Customers web site.
- 17.2 A notice will be deemed to have been received at the relevant time set out below (or where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below):
  - (a) where the notice is delivered personally, at the time of delivery;
  - (b) where the notice is sent by first class post, 48 hours after posting; and
  - (c) where the notice is sent by fax, at the time of the transmission (providing the sending party retains written evidence of the transmission).

## **18. General**

- 18.1 No breach of any provision of a Contract will be waived except with the express written consent of the party not in breach.
- 18.2 If any provision of a Contract is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of the Contract will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).
- 18.3 Contracts may not be varied except by a written document signed by or on behalf of each of the parties.
- 18.4 The Supplier may freely assign its rights and obligations under a Contract without the Customer's consent to any Affiliate of the Supplier or any successor to all or a substantial part of the business of the Supplier from time to time. Save as expressly provided in this Clause or elsewhere in a Contract, neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise dispose of or deal in a Contract or any rights or obligations under a Contract.
- 18.5 Each Contract is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to a Contract are not subject to the consent of any third party.
- 18.6 Subject to Clause 12.1:
  - (a) Excluding any Clauses specified as excluded in a Supplier's Proposal, these Terms and any Proposal will constitute the entire agreement between the parties in relation to the subject matter of the Contract, and supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter;
  - (b) neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into a Contract; and
  - (c) neither party will have any liability other than pursuant to the express terms of a Contract.
- 18.7 Contracts will be governed by and construed in accordance with the laws of England and Wales and the courts of England will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with a Contract.