

# Stem Computer Systems is a trading division of Brigantia Partners Limited

## Terms and Conditions of Sale

### 1.0 DEFINITIONS

- 1.1 "Customer" means the party identified in this agreement who will be supplied Products in accordance with these terms & conditions.
- 1.2 "Stem Computer Systems" means Stem Computers Systems and a trading division of Brigantia Partners Limited of Units 8, The Coach House, Phoenix Business Centre, Low Mill Road, Ripon, HG4 1NS or any associated company.
- 1.3 "Products" means goods including services, hardware and software items to be provided by Stem Computer Systems to the customer in accordance with these terms & conditions
- 1.4 "Third Party Software" means all software owned by or licensed to the Customer from a third party owner (whether or not supplied by Stem Computer Systems) and which comprises of the Products.

### 2.0 ORDER ACCEPTANCE

- 2.1 All orders placed with Stem Computer Systems by the Customer for Products shall constitute an offer to Stem Computer Systems under term 7 of these conditions, subject to availability of the products and to acceptance of the order by a Stem Computer Systems authorised representative.
- 2.2 All orders are accepted and products supplied subject to these express terms & conditions only. No amendment of these terms & conditions will be valid unless confirmed in writing by Stem Computer Systems' authorised representative.
- 2.3 It is agreed that these terms & conditions prevail over the customer's terms and conditions unless these latter terms & conditions are amended by Stem Computer Systems in writing and signed by Stem Computer Systems authorised representative.

### 3.0 DESPATCH

- 3.1 Any time quoted for despatch is to be treated as an estimate only, but despatch maybe postponed because of conditions beyond Stem Computer Systems' reasonable control, and in no event shall Stem Computer Systems be liable for any damages or penalty for delay in despatch or delivery.
- 3.2 Risks shall pass to the Customer at the time the products are despatched by Stem Computer Systems. Stem Computer Systems accepts no liability for loss or damage caused by the carrier.
- 3.3 If products have not been received, the customer must notify Stem Computer Systems within 5 days of the date of invoice. If proof of delivery is required, this must be requested within 14 days of date of the invoice.

### 4.0 CANCELLATION & RESCHEDULING

- 4.1 Subject to clause 8.2 any request by the customer for cancellation of an order or for rescheduling of deliveries will only be considered by Stem Computer Systems if made at least 24 hours before despatch of the products, and shall be subject to acceptance by Stem Computer Systems at Stem Computer Systems' discretion, and subject to a reasonable administration charge therefore by Stem Computer Systems. The Customer hereby agrees to indemnify Stem Computer Systems against all loss, and cost (including the cost of labour, materials used and overheads incurred), damages, charges and expenses arising out of the order and its cancellation or rescheduling.

### 5.0 PRICES

- 5.1 Catalogues, Price Lists and other advertising literature or material used by Stem Computer Systems are intended only as an indication as to price and range of goods offered and no prices, description of other particulars contained therein shall be binding of Stem Computer Systems.
- 5.2 All prices are given by Stem Computer Systems at the time of order or an ex-works basis and the Customer is liable to pay for transport packing and insurance.
- 5.3 All quoted or listed prices are based on the cost to Stem Computer Systems of supplying the Products to the Customer. If before delivery of the Products there occurs any increase in any of such costs in respect of Products which have not yet been delivered, the price payable may be subject to amendment without notice at Stem Computer Systems' discretion.
- 5.4 All prices are exclusive of Value Added Taxation and any similar taxes. All such taxes are payable by the Customer and will be applied in accordance with UK legislation in force at the tax point date.

### 6.0 PAYMENT TERMS

- 6.1 Invoices will be raised and dated by Stem Computer Systems on the date of dispatch of the Products. Unless otherwise specifically negotiated and agreed, invoices will be payable by the Customer 30 days from the date of invoice. Payments which are not received when payable will be considered overdue and remain payable by the Customer together with interest for late payment from the date payable at the rate set out in accordance with The Late Payment of Commercial Debts (Interest) Act of 1998. Such interest shall accrue on a daily basis and be payable on demand after as well as before judgement.
- 6.2 If goods are being delivered on a scheduled basis, Stem Computer Systems will part invoice for each delivery. (clause 7.1 will still apply)
- 6.3 When all prices, taxes and charges due in respect of the Products and any Products supplied previously to the Customer have been paid in full, title to the hardware Products only shall pass to the Customer.
- 6.4 Notwithstanding dispatch and the passing of risk in the Products to the Customer pursuant to clause 4, or any other provision of these conditions, the property in the hardware Products shall not pass to the Customer until Stem Computer Systems has received in cash or cleared funds payment of the price of the Products and all of the Products agreed to be sold by Stem Computer Systems to the Customer for which payment is due.
- 6.5 Until such time as the property in the Products passes to the Customer (and provided the Products are still in existence and have not been resold), Stem Computer Systems shall be entitled at any time to require the Customer to deliver up the Products to Stem Computer Systems and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Products are stored and repossess the Products.
- 6.6 The Customer's power of sale or right to use such Products shall immediately cease if an Administrative Receiver is appointed over all or any part of it's assets or if its adjudicated bankrupt or enters into liquidation whether compulsory or voluntary, or if the becomes unable to pay it's debts with the meaning of the insolvency Act 1986
- 6.7 On termination of the Customer's right to use the Products the Customer will immediately hold the Products to the order of Stem Computer Systems.
- 6.8 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness of any of The Products which remain the property of Stem Computer Systems, but if the Customer does so, all moneys owing by the Customer to Stem Computer Systems shall (without prejudice to any other right or remedy of the seller) forthwith become due and payable.
- 6.9 Stem Computer Systems reserves the right to cease supplies of Products to the Customer at anytime. On such cessation of supplies, Stem Computer Systems reserves the right to withdraw any credit facility such that the whole Customer's account becomes due for payment forthwith.

### 7.0 SPECIFICATION OF PRODUCTS

- 7.1 Stem Computer Systems 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 specification or technical data and will not be responsible for any loss or damage resulting from curtailment or cessation of supply following such variation. Stem Computer Systems will use its reasonable endeavours to advise the Customer of any impending variation as soon as it received any notice thereof from the manufacturer.
- 7.2 Unless otherwise agreed, the Products are supplied in accordance with the manufacturer's standard specifications as these may be improved, substituted or modified. Stem Computer Systems reserves the right to increase its quote or listed price, or to change accordingly in respect of any orders accepted for Products of non-standard specifications and in no circumstances will it consider cancellation of such order or the return of the products.

### 8.0 PROPRIETY RIGHT IN SOFTWARE PRODUCTS

- 8.1 The Customer hereby acknowledges that any proprietary right 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.
- 8.2 The Customer hereby acknowledges that it is its sole responsibility to comply with any terms and conditions of licence attaching to Third Party Products supplied and delivered by Stem Computer Systems (including if so required the execution and return of a Third Party Software Licence). The Customer is hereby notified that failure to comply with such terms and conditions could result in the Customer being refused a software licence or having the same revoked by the proprietary owner. The Customer further agrees to indemnify Stem Computer Systems in respect of any costs, charges of expenses incurred by Stem Computer Systems at the suit of a Third Party Software owner as a result of any breach by the Customer of such conditions.
- 8.3 NO TITLE OR OWNERSHIP OF SOFTWARE PRODUCT OR ANY THIRD PARTY SOFTWARE LICENSED TO THE CUSTOMER UNDER THIS AGREEMENT IS TRANSFERRED TO THE CUSTOMER UNDER ANY CIRCUMSTANCES.

## 9.0 RETURNS

9.1 Stem Computer Systems reserves the right to levy administration charges in respect of the rotation of Products and returns. Returns must be made subject to the following:-

9.2

- A. prior authority having been obtained from Stem Computer Systems which will be given at Stem Computer Systems' sole discretion;
- B. within 30 days on the date of invoice;
- C. subject to the stock rotation policies of the authors and/or distributors or manufacturers;
- D. the Products must be properly packaged;
- E. the Products must be in saleable condition;
- F. the product must be accompanied by a detailed packing list;
- G. the Product is covered by warranty (see section 11)

9.3 Stem Computer Systems reserves the right to reject any Products returned which do not comply with the conditions set out in clause 9.2

9.4 If Stem Computer Systems nevertheless agrees to accept any Products returned in a non saleable condition, Stem Computer Systems reserves the right to charge the cost to the Customer of bringing the Products to a saleable condition.

## 10.0 WARRANTY

10.1 Stem Computer Systems warrants that it has good title to or licence to supply all Products to the Customer.

10.2 If any part of the hardware Products should prove defective in materials or workmanship under normal operation or service, such products will be repaired or replaced only in accordance with any warranty cover and terms provided by the manufacturer of the Products PROVIDED ALWAYS THAT the customer notifies Stem Computer Systems of any such non-conformity within 90 days of the date of delivery of the applicable software Product.

10.3 All software Products supplied hereunder are supplied as is and the sole obligation of Stem Computer Systems in the connection with the supply of software Products is to use all reasonable endeavour to obtain and supply a corrected version from the manufacturers concerned in the event that any such software product should fail to conform to its Product description PROVIDED THAT the Customer notified Stem Computer Systems of any such nonconformity within 60 days of the date of delivery of the applicable software Product.

10.4 If the Products are rejected by the Customer as not being in accordance with the Customer's order pursuant to clause 10.2 or 10.3, Stem Computer Systems will only accept the return of such Products provided that it receives written notification thereof giving detailed reason for rejection. Stem Computer Systems will not consider any claim for compensation, indemnity or refund until liability, if any, has been established or agreed with the manufacturer and where applicable the insurance company under no circumstances shall be invoiced, Products deducted or set off by the Customer until Stem Computer Systems has passed corresponding credit note. EXCEPT AS SPECIFICALLY SET OUT IN THIS CLAUSE 10, WARRANTIES, WHETHER EXPRESS OR IMPLIED, BY STATUTE OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF DESCRIPTION, DESIGN, MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE, OR ARISING FROM ANY PREVIOUS COURSE OF DEALING, USAGE OR TRADE PRACTISE, ARE HEREBY EXCLUDED.

## 11.0 INDEMNITIES AND LIMITS OF LIABILITY

11.1 Stem Computer Systems will indemnify the Customer for direct physical injury or death caused solely by defects in any of the Products or caused solely by the negligence of its assigned employees acting within the course of their employment and the scope of their authority.

11.2 Stem Computer Systems will indemnify the Customer for direct damage to property caused solely by negligence of its assigned employees acting within the course of their employment and the scope of their authority. The total liability of Stem Computer Systems under this sub clause shall be limited to £1,000,000.00 for any one event. All terms of any nature, express or implied, statutory or otherwise, as to correspondence with any particular description of sample, fitness for purpose of merchantability, are hereby excluded.

11.3 Except as stated in clauses 11.1 and 11.2, Stem Computer Systems disclaims and excludes all liability to the Customer in connection with these terms and conditions including the Customers use of the Products and in no event shall Stem Computer Systems be liable to the Customer for special, indirect or consequential damage including but not limited to loss of profits, loss arising from loss of data, or in connection with the use of the Product. All terms of any nature, express of implied, statutory or otherwise, as to correspondence with any particular description or sample, fitness or purpose or merchantability and hereby excluded.

11.4 The Customer shall indemnify and defend Stem Computer Systems and its employees in respect of any claims by third parties which are occasioned by or arise from any Stem Computer Systems performance or non performance pursuant to the instructions of the Customer or its authorised representative.

## 12.0 TERMINATION FOR CLAUSE

12.1 This agreement may be terminated forthwith by notice in writing:

12.2 By Stem Computer Systems if the Customer failed to pay any sums due hereunder by the due date notwithstanding the provisions for late payment in the clause 6.1.

12.3 If either party fails to perform any of its obligations under this Agreement and such failure continues for a period of 14 days after written notice thereof, by the other party.

12.4 If either party is involved in any legal proceedings concerning its solvency, or ceases trading, or commits an act of bankruptcy or is adjudicated bankrupt or enters into liquidation, whether compulsory or voluntary, other than for the purpose of an amalgamation or reconstruction or makes an arrangement with its creditors or petitions for an administration order or has a Receiver or a Manager appointed over all or any part of its assets or generally becomes unable to pay its debts within the meaning of the Insolvency Act 1986, then without prejudice to any other right or remedies available to it, the other party shall have the right to terminate this Agreement forthwith.

12.5 Any termination of this Agreement pursuant to this clause shall be without prejudice to any other rights or remedies a party may be entitled to hereunder law, and shall not effect any accrued rights or liabilities of either party.

## 13.0 EXPORT AND/OR RE-EXPORT LIMITAION

13.1 Having regard to the current statutory or other United Kingdom government regulations in force from time to time, in the case of Products manufactured in the United States of America the current export rules and regulations of the United States Department of Commerce in force from time to time and regardless of any disclosure made by the Customer to Stem Computer Systems of an ultimate destination for any Products, the Customer will not export or re-export directly any Products without first obtaining all such written consents or authorisations as may be required by any applicable government regulations.

## 14.0 CONTRACT

14.1 The headings in this Agreement are for ease of reference only and shall not affect interpretation or construction.

14.2 No forbearance, delay, or indulgence by either party in enforcing its respective rights shall prejudice or restrict the rights of that party, and no waiver of any other right or any later breach.

14.3 The Customer agrees not to assign any of its rights herein without the prior consent of Stem Computer Systems.

14.4 In the event of any of these terms and conditions or any part of them being judged illegal or unenforceable for any reason, the continuation in full force and effect of the remainder of them shall not be prejudiced.

14.5 Neither party shall be liable to the other for any delay in or failure to perform its obligations hereunder other results from force majeure act of God, fire, explosion, accident, industrial dispute or any other cause beyond its reasonable control.

14.6 Any documents or notices given hereunder by either party to the other must be in writing and may be delivered personally or by recorded delivery or registered post and in the case of post will be deemed to have been given 2 working days after the date of postage.

14.7 These terms and conditions shall be governed and construed in accordance with English Law. The Customer acknowledges that he has read these Terms and Conditions and agrees that it is the complete and exclusive statement of the Agreement between the Customer and Stem Computer Systems.