

IP Cortex Standard Terms and Conditions for the Supply of Goods and Services

1. Definitions

- 1.1. 'Company' means IP Cortex Limited, incorporated in England under company number 04463272 whose Registered Office address is Park View House, 44a Main Road, Drayton Parslow, Milton Keynes MK17 0JS
- 1.2. 'Quotation' includes, in the case of an online order, the Order Confirmation Screen
- 1.3. 'Goods' includes both hardware and (where the context permits) software.
- 1.4. 'Supplies' includes Goods and services.
- 1.5. 'Purchaser' means the party contracting with the Company.
- 1.6. 'Delivery' includes performance, in the case of Services.
- 1.7. The Company does not sell to consumers; the Purchaser warrants that it is (and enters any Contract as) a bona fide business, and that it is not a 'consumer' within the meaning of any applicable regulations.

2. The agreement

- 2.1. Entire agreement: These Terms and the Quotation (including any other documents expressly referred to therein) together constitute the entire agreement and understanding between the Company and the Purchaser ('Contract') in relation to the Supplies specified in the Quotation.
- 2.2. Acceptance by the Company of any order is conditional upon the Purchaser's acceptance that the Contract will be governed solely by these Terms. In particular, it is agreed that any Purchase Order or similar document from the Purchaser relating substantially to the subject matter of the Quotation is intended to accept these Terms and the Quotation, but is otherwise for the Purchaser's own administrative purposes only; notwithstanding its content, a Purchase Order will not vary add to or detract from these Terms and the Quotation, save to the extent expressly accepted by the Company in writing signed by a director.
- 2.3. The Company shall not be bound by an order unless and until the Company has issued its Order Confirmation, or until delivery of any hardware or software, or performance of any services has commenced (whichever happens first). Acceptance of any Goods or of commencement of services (as the case may be) supplied under an Order Confirmation issued by the Company shall be a sufficient act of acceptance of all these Terms.
- 2.4. Representations: The Company and the Purchaser mutually acknowledge that, in entering into a Contract, they do not do so on the basis of or relying on any representation, warranty or other provision not expressly included in the Quotation or in these Terms, and accordingly all conditions, warranties or other terms implied by statute or common law (including as to quality or fitness for any particular purpose) are hereby excluded to the fullest extent legally permissible.. Any liability or remedy for innocent or negligent misrepresentation is expressly excluded.
- 2.5. Changes must be agreed in writing: No other terms or subsequent changes shall apply unless agreed in writing and signed by both parties.
- 2.6. Priority: If there is any conflict, documents shall be taken to have the following priority:
First, subsequent changes agreed in writing and signed by both parties (in the case of the Company, by a director)
Second, the Quotation
Third, these Terms
Fourth, any other documents expressly referred to in the Quotation.
- 2.7. Third party rights: No person who is not a party to this Agreement has any rights under the Contracts (Rights of Third Parties) Act 1999.

3. Secrets

- 3.1. Each party will keep any confidential information disclosed by the other secret, and will not use or take advantage of it without the other's agreement. This does not apply to information known to the receiver before it was disclosed in connection with a Contract, or which becomes public knowledge without the fault of the receiver.

4. Prices

- 4.1. 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.
- 4.2. Quotations are provided by the Company in good faith based on (a) information provided by the Purchaser, and (b) the assumptions that any matters specified in a Quotation as dependencies or facilities to be provided by the Purchaser will respectively be complied with and provided, and any equipment to be provided by the Purchaser will be in proper working order and functioning correctly. the Company reserves the right to adjust the price if the Purchaser has failed to disclose or has misstated any information on which the Company has relied in any material particular, or if any matters specified as dependencies in a Quotation are not complied with, or if any facilities to be provided are not in fact provided, or if any equipment to be provided by the Purchaser is not in proper working order or fails to function correctly.
- 4.3. Prices are based on the cost to the Company at the date of the Company's Order Confirmation; the Company reserves the right to adjust the price by the amount of any increase affecting the Company after that date attributable to market conditions prevailing at the date of Delivery. 'Market conditions' include (but are 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.
- 4.4. Prices are based on Delivery at the address specified, and on any relevant specifications; it is subject to adjustment in the event of Delivery at a different address, or in the event of any modification (either at the request or with the consent or knowledge of the Purchaser).
- 4.5. Where Services are to be provided on a 'Time and Materials' basis up to a maximum figure, the Company does not (unless expressly stated) warrant that such maximum figure will be sufficient to complete the task(s) specified.

- 4.6. Prices may be based on the quantity specified in a Quotation, and the Company reserves the right to adjust the price if orders are placed for a different quantity, or if the quantity actually delivered to the Purchaser differs (for any reason) from that specified in the Quotation.

5. Goods

Licences

- 5.1. It is the Purchaser's sole responsibility to obtain any required export and import licences.

Drawings, etc.

- 5.2. All drawings, weights, dimensions, descriptions and illustrations contained in any sales literature and price lists are approximate only, and do not form part of a Contract. Drawings and technical documents provided by the Company are confidential and intended for the use or information of the Purchaser alone.

Delivery and Installation

- 5.3. Delivery dates are estimates only, and unless the Company expressly agrees in writing to be bound by a delivery date as being of the essence of a Contract, it shall not be in breach in the event of part, late or non delivery. Where the Company expressly agrees in writing to be bound by a delivery date, the Company's liability in respect of any loss or damage suffered by the Purchaser directly attributable to such part, late or non delivery (subject to any other of these Terms) is limited to the price payable for the undelivered Goods.
- 5.4. 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 any 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.
- 5.5. 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.
- 5.6. Where applicable, the Purchaser shall prepare the area of delivery and installation for the Goods and provide free access to the location and to any services or facilities that may be required to deliver and install the Goods. Where these have not been prepared or provided and as a result the Company is prevented from carrying out delivery or installation at the pre arranged day and time, the Company shall be entitled to charge any additional costs incurred.
- 5.7. 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

- 5.8. 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.
- 5.9. The Company accepts responsibility for damage, shortage or loss in transit if:
 - 5.9.1. 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)
 - 5.9.2. the Goods have been handled by the Purchaser in accordance with the Company's or the carrier's conditions of carriage or handling stipulations.
- 5.10. Where the Company accepts responsibility under this Clause, it shall, at its sole option, 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.

6. Payment

- 6.1. All accounts are payable in advance, unless otherwise agreed by the Company. 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 to substitute cash with order. Discounts only apply where agreed in writing by the Company.
- 6.2. So far as payment of the Company's invoices is concerned, time is of the essence, and if the Purchaser does not make payments on the due date, or if any payment made is subsequently revoked or debited, then, without prejudice to any other remedy:-
 - 6.2.1. the Company may withhold or suspend supply of Goods or services in respect of any Contract
 - 6.2.2. all sums owing by the Purchaser to the Company on any account shall be due and payable immediately
 - 6.2.3. the provisions of the Late Payment of Commercial Debts (Interest) Act 1998 shall apply
 - 6.2.4. the Purchaser will indemnify the Company against all loss damage costs and expenses (including legal expenses on the indemnity basis) incurred by the Company
 - 6.2.5. 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
 - 6.2.6. the Company may appropriate any part-payment made by the Purchaser to any other sums owed by the Purchaser to the Company.
- 6.3. The Purchaser shall not be entitled to make any deduction from sums otherwise due unless the validity, the amount and the deduction have been agreed in writing

by a Director of the Company.

7. Intellectual Property Rights

- 7.1. Intellectual property rights in any documents, software or other deliverables ('Deliverable') originating from the Company are and remain the Company's sole property.
- 7.2. Where a Quotation specifies that the Purchaser is to have 'company-wide licence', the Purchaser has non-exclusive, non-transferable, perpetual, worldwide, royalty-free licence to use Deliverables internally 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.
- 7.3. Subject to the above, where a software Deliverable 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 Deliverable; or, if already Delivered, retrieve it from the Purchaser. In absence of a developer's software licence being furnished, the Purchaser, on issue of the Company's Order Confirmation or upon Delivery, hereby accepts a non exclusive, non transferable licence to use the Deliverable upon the following terms:
 - 7.3.1. the Purchaser undertakes not to copy (other than for normal operation and except to the extent permitted by the applicable law), reproduce, translate, adapt, vary or modify the Deliverable nor to communicate the same to any third party without the Company's prior written consent;
 - 7.3.2. the Purchaser undertakes to use the Deliverable only on such equipment as may be specified and not to remove, add to, change or otherwise tamper with any copyright notice, legend or logo appearing in or on the Deliverable or the medium upon which it resides;
 - 7.3.3. the Company may terminate the Licence forthwith if the Purchaser fails or has failed to comply with any of these Terms.
- 7.4. The Purchaser warrants that, for the purpose of performing the work covered by this Contract:
 - 7.4.1. it has all necessary rights to use any specification, design, instructions, content, or other material and information (together, 'Purchaser Materials') provided to the Company
 - 7.4.2. use by the Company of Purchaser Materials shall not cause the Company to infringe any rights (including Intellectual Property Rights) of or belonging to any third party
 - 7.4.3. it will indemnify the Company in full against all costs, charges, claims and expenses incurred directly or indirectly by the Company as a result of any alleged infringement of third party rights resulting from use of the Purchaser Materials (including the costs of defending such a claim on the indemnity basis).

8. Responsibility

- 8.1. The Company's liability in relation to any Goods procured for the Purchaser is limited to the amount paid by the Purchaser for such Goods. Goods consisting of media containing publicly licensed software are sold on the basis that the Company sells the distribution media only, and accepts no responsibility for the content.
- 8.2. The Company shall not be liable for damage or defects in Goods caused by improper use, abuse, mismanagement or by their use the Goods outside any specifications detailed in the manuals and documentation relating to them or outside their specific application.
- 8.3. Subject to any statutory rights not capable of exclusion, the Company's responsibilities in relation to defects inherent in hardware or software applications originating from third parties are limited to diagnosis, and liaising with the third party supplier on the Purchaser's behalf. A Contract is not a substitute for a maintenance agreement with a supplier or distributor of specialist hardware or software.
- 8.4. The Company will provide such services as may be agreed, so far as is reasonably practicable within any agreed timescale, and with all proper skill and care (having due regard to current industry practice).
- 8.5. If either party is prevented or delayed in the performance of any of its obligations by any cause arising from or attributable to acts, events, omissions or accidents beyond its reasonable control, then such party is excused the performance for so long as such cause of prevention or delay shall continue. Subject thereto, each party accepts liability for direct loss and damage resulting from its negligence.
- 8.6. The Company is not liable for any delays or failures on the part of third party suppliers. The Company is not liable for economic, consequential or indirect loss or damage, or for loss of profit, business, revenue, goodwill or anticipated savings. If the Company substantially fails to perform the Contract, its liability is limited to a refund of all sums paid, subject to the return of any Goods in the condition they were when supplied to the Purchaser.
- 8.7. The Company's entire liability for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with this Agreement is limited to the higher of (a) £10,000, and (b) 125% of the total sums to be paid by the Purchaser under the Contract, except to the extent that such liability may not be lawfully excluded or limited.
- 8.8. The Company shall not in any event be liable for any claims not notified to it in writing within twelve months of the cause of action accruing.
- 8.9. The Company does not exclude or limit liability for death or personal injury arising as a result of the Company's negligence.

9. Termination and Consequences

- 9.1. Either party may end a Contract by immediate written notice if the other is in serious breach of contract, and has failed to rectify the breach within 14 days of a written requirement to do so.
- 9.2. Upon termination for whatever reason, the Purchaser shall pay to the Company for all Goods delivered, and for all services provided on a quantum meruit basis. Termination, howsoever or whenever occasioned shall be subject to any rights and remedies either party may have under this Agreement or in Law, and any rights or obligations of a continuing nature shall survive.

10. Title to the Goods and the Passing of Risk

- 10.1. 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.
- 10.2. 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.
- 10.3. Until such time as title in Goods has passed to the Purchaser:
 - 10.3.1. the Purchaser shall, subject to the Company's rights hereunder
 - 10.3.1.1. 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;
 - 10.3.1.2. store the Goods separately from any goods belonging to the buyer or any third party, and keep the Goods clearly marked and identifiable as being the property of the Company;
 - 10.3.1.3. 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
 - 10.3.1.4. insure such Goods to their 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.
 - 10.3.2. the Company:
 - 10.3.2.1. shall be entitled to enter the Purchaser's premises upon reasonable notice to verify the Purchaser's compliance with the preceding clause;
 - 10.3.2.2. 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;
 - 10.3.2.3. 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.

11. Company Staff

- 11.1. 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.
- 11.2. 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.

12. Miscellaneous

12.1. 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.

12.2. 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 severed from the body of these terms (which shall continue to be valid and enforceable to the fullest extent permitted by Law).

12.3. Waiver

Failure or neglect by either party to enforce at any time any of the provisions hereof shall:

- 12.3.1. not be construed nor shall be deemed to be a waiver of its rights hereunder
- 12.3.2. not in any way affect the validity of the whole or any part of any contract under these terms
- 12.3.3. not prejudice its rights to take subsequent action.

12.4. Headings

The headings of these terms are inserted for convenience of reference only and are not intended to be part of or to affect their meaning or interpretation.

12.5. 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.

12.6. Time

Time (other than for payment) shall not be of the essence unless expressly made so by notice in writing.

12.7. Law

These terms and any contract made under them shall be construed in accordance with English Law, and the English courts shall have sole jurisdiction in relation to all matters arising out of these terms.