

Terms and Conditions of Sale for Malcolm Thomas Computer Solutions Ltd ("MTCS") and the party or parties contracting to purchase Goods and /or Services

All orders are accepted subject to the terms and conditions of sale laid out below. These terms and conditions shall only be varied or special terms and conditions agreed in exceptional circumstances and any such variations or special terms and conditions will only apply with the written agreement of a director of MTCS.

1. Definitions

In these conditions: -

"Client" means the person who accepts a quotation of MTCS and whose order for the Goods is acted on by MTCS.

"Goods" means computer software and hardware, details of which are set out in the order which MTCS is to supply in accordance with these Conditions.

"Services" means the provision of consultancy or support services by MTCS's employees and agents in connection with the maintenance or development of the Client's computer systems.

"Contract" means the contract for the purchase and sale of the Goods subject to these Conditions.

"Conditions" means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any variation or special terms and conditions agreed in writing between a director of MTCS and the Client.

"Software" means both the computer program and related documents.

"Licence" means the terms and conditions enclosed with each piece of software supplied or delivered by MTCS.

2. Quotations and Acceptance

- (a) Quotations given by MTCS are valid for 30 days (except where otherwise stated) and do not constitute an offer capable of acceptance by the Client. No binding contract shall arise until MTCS accepts the Client's order by acknowledging the same in writing. Such acknowledgement shall be subject to the software or equipment quoted for still being available and the provision of sufficient information by the Client to enable MTCS to proceed with the order. MTCS may at its discretion on small orders action the order without raising an acknowledgement. In these circumstances no binding contract shall arise until the Goods are delivered to the Client.
- (b) MTCS will not accept any variation or modification of these terms or conditions or any other quoted terms or conditions unless the same are specifically agreed by MTCS in writing. The placement of any order by a Client shall be deemed to constitute acceptance of these terms.

3. Basis of the Sale

- (a) MTCS shall sell and the Client shall purchase the Goods and Services in accordance with the written quotation of MTCS and these conditions shall govern the Contract to the exclusion of any other terms and conditions specified by the Client, unless agreed by MTCS in writing.
- (b) MTCS its employees and agent are not authorised to make any representation concerning the Goods unless confirmed by MTCS in writing. In entering into the contract, the Client acknowledges that it does not rely on, and waives any claim for breach of any such representations which are not so confirmed.
- (c) Any advice or recommendations given by MTCS its employees or agents to the Client's employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by MTCS is followed or acted upon entirely at the Client's own risk and accordingly MTCS shall not be liable for any such advice or recommendation which is not so confirmed.
- (d) Any typographical clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by MTCS shall be subject to correction without any liability on the part of MTCS.

4. Orders and Specifications

- (a) The Client shall be responsible to MTCS for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Client, and for giving MTCS any necessary information relating to the Goods or Services within a sufficient time to enable MTCS to perform the Contract in accordance with the terms, and time shall not be deemed to be of the essence of this contract unless and where specifically stated herein.
- (b) The quantity quality and description of and any specification for the Goods or Service shall be those set out in MTCS's quotation with such amendments as are accepted by MTCS in writing.
- (c) MTCS reserves the right to make any changes in the specification of the Goods or Services which are required to conform with any applicable safety or other statutory requirements or, where the Goods or Services are to be supplied to MTCS's specification, which do not materially affect their quality or performance.
- (d) No order which has been accepted by MTCS may be cancelled by the Client except with the agreement in writing of MTCS and on terms that the Client shall indemnify MTCS in full against all loss (including loss of profit), damages, charges and expenses incurred by MTCS as a result of cancellation.

5. Price and Delivery

- (a) The price of the Goods does not include VAT unless specifically stated and the Client shall be additionally liable to pay the VAT to MTCS at the rate applicable at the time of delivery of the Goods.

- (b) Unless otherwise agreed delivery will be ex-works and Goods will be packed to MTCS's normal specifications in non-returnable packing and carriage will be arranged at the request and at the expense of the Client. Where applicable cash on delivery charges will be added to the price of the Goods.
- (c) The price of the Goods and Services shall be MTCS's quoted price or where no price has been quoted (or a quoted price is no longer valid), the price listed in MTCS's published price list current at the date of acceptance of the order by MTCS. All prices quoted are valid for 30 days only or until earlier acceptance by the Client, after which time they may be altered by MTCS without giving notice to the Client.
- (d) MTCS reserves the right by giving notice to the Client at any time before delivery, to increase the price of Goods or Services to reflect any increase in the cost to MTCS which is due to any factor beyond its control (such as, without limitations any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in cost of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Client, or any delay caused by instruction of the Client or failure of the Client to give MTCS adequate information or instructions.
- (e) MTCS reserves the right to suspend or cancel any unfulfilled Contract where payment for any previous Contract remains outstanding after due date of payment or where in the reasonable opinion of MTCS the Client is unlikely to be able to or willing to pay his debts as they fall due.
- (f) Whilst MTCS shall make every effort to supply the Goods or Services within the required time, any delivery period quoted is an estimate only so that time will not be of the essence provided MTCS takes all reasonable steps to deliver the Goods or Services at the time stated but MTCS shall be under no liability whatsoever for failure to do so.
- (g) MTCS is not responsible for loss or damage of Goods in transit. If the carriers and MTCS are notified of loss or damage within three days of delivery or non-delivery and within fourteen days of date of advice then there may be a claim against the carriers. In the event of damage, packing materials must always be retained for examination by the carriers. Goods sent on instructions of clients at "owners risk" cannot be the subject of a claim for loss or damage.

6. Risk and Property

The following expression shall apply in this clause 6: -

Goods other than Software ("Hardware")

- (a) Risk of damage to or loss of Hardware shall pass to the Client: -
 - (i) in the case of Hardware to be delivered at MTCS's premises, at the time when MTCS notifies the Client that the Hardware is available for collection, or
 - (ii) in the case of Hardware to be delivered otherwise than at MTCS's premises when MTCS has tendered delivery of the Hardware.
- (b) Notwithstanding delivery and the passing or risk in the Hardware, or any other provisions of these Conditions, the property in the Hardware shall not pass to the Client until MTCS has received in cash or cleared funds payment in full of the price of the Hardware and all other Hardware agreed to be sold by MTCS to the Client for which payment is then due.
- (c) Until such time as the property in the Hardware passes to the Client, the Client shall hold the Hardware as MTCS's fiduciary agent and bailee, and shall keep the Hardware separate from those of the Client and third parties and properly stored, protected and insured and identified as MTCS's property. Until that time the Client shall be entitled to resell or use the Hardware in the ordinary course of its business, but shall account to MTCS for the proceeds of sale or otherwise of the Hardware, whether tangible or intangible, including insurance proceeds and shall keep all such proceeds separate from any moneys or property of the Client and third parties and in the case of tangible proceeds properly stored, protected and insured.
- (d) Until such time as the property in the Hardware passes to the Client, MTCS shall be entitled at any time to require the Client to deliver up the Hardware to MTCS and, if the Client fails to do so forthwith to enter upon any premises of the Client or any third party where the Hardware is stored and repossess the Hardware.
- (e) The Client shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Hardware which remain the property of MTCS, but if the Client does so all moneys owing by the Client to MTCS shall (without prejudice to any other right or remedy of MTCS) forthwith become due and payable.
- (f) Software shall be specifically excluded in clauses 6 (a) to and including 6 (e). Property in the Goods shall not pass to the client and the terms of the Licence related to that software shall always take precedent over these Terms and Conditions of Sale.

7. Contract Parameters and Variation Charges

The contract relates only to the Goods and Services detailed in MTCS's quotation and shall not include accessories, optional extras or Services other than those detailed therein. Installation or the provision of Services shall be limited to the description laid out in these Terms and Conditions, any additional Services provided by MTCS its agents or servants shall be charged to the Client at MTCS's current rate for such Services. If MTCS incurs extra expense through variations in the original contract under the instructions of the Client or the Client's authorised representative or through incomplete or incorrect information provided by the Client or the Client's representative or through errors in work which are not under MTCS's control or through delays, then the Client shall be charged labour at MTCS's current labour rate, vehicle mileage at the MTCS current rate, travel by air, train or similar means at cost and materials or accessories at MTCS's current list price.

8. Delivery

- (a) In the event of MTCS being unable to deliver or supply any Goods which are the subject of this contract for any reason other than those specifically excluded herein, MTCS's liability in respect of any loss incurred by the Client shall be limited to

the difference if any of the cost to the Client (in the cheapest available market) of replacement Goods.

- (b) If the Client fails to take delivery of the Goods or fails to give MTCS adequate delivery instructions at the time stated for delivery then, without prejudice to any other right or remedy available to MTCS, MTCS may, at its absolute discretion: -
- (i) store the Goods until actual delivery and charge the Client for reasonable costs (including insurance) of storage; or
- (ii) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Client for the excess over the price under the Contract or charge the Client for any shortfall below the price under the Contract.

9. Payment

- (a) Payment by the Client shall be due within the payment period set out in MTCS's quotation or subsequent acknowledgement of order. Any discount specified by MTCS shall apply only where the payment is made and received within the aforesaid period. If no payment period is set out in these documents, payment shall be due immediately. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- (b) If the Client fails to make any payment on the due date then, without prejudice to any other right or remedy available to MTCS, MTCS shall be entitled to: -
- (i) cancel the contract or suspend any further deliveries to the Client;
- (ii) appropriate any payment made by the Client to such of the Goods or Services (or the Goods or Services supplied under any other contract between the Client and MTCS) as MTCS may think fit (notwithstanding any purported appropriation by the Client); and
- charge the Client interest (both before and after any judgement) on the amount unpaid, at the rate of 2 per cent per month until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

10. Description and Date

- (a) MTCS reserves the right (where it is the manufacturer) to alter or change the design of the Goods.
- (b) MTCS shall endeavour to ensure the accuracy of technical data literature and catalogues relating to the Goods but MTCS (so far as permitted by law) shall not be liable to the Client its employees agents or any other third party in contract tort or otherwise for any damages including loss of profits and goodwill or injury arising directly or indirectly from any error or omissions in such technical data literature and catalogues.
- (c) Any information or specifications provided to or divulged to the Client shall be treated as confidential and shall not without the written consent of MTCS be divulged to any third party for any purpose other than the execution of any contract with MTCS.
- (d) MTCS shall treat as confidential any information provided by the Client which is designated as confidential or which by its nature is confidential, provided that this shall not extend to any information rightfully in its possession prior to negotiating any contract.

11. Warranty

The following expressions shall apply in this Clause 11: -

Goods of which MTCS is not the original manufacturer ("Manufactured Goods")

The installation by MTCS employees or agents of Manufactured Goods and Software ("Installation")

In respect of Manufactured Goods: -

Subject to the conditions set out below MTCS warrants that: -

- (i) the Goods will correspond with their specification at the time of delivery and the Client shall only be entitled to the benefits of any such warranty or guarantee by the manufacturer to MTCS and MTCS agrees to assign to the Client (insofar as it is able) the benefit of any warranty granted to MTCS by the manufacturer of the Manufactured Goods;
- (ii) the installation will be undertaken with reasonable skill and care.
- (b) The above warranties are given by MTCS subject to the following conditions: -
- (i) MTCS accepts no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Client.
- (ii) MTCS accepts no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow MTCS's instruction (whether oral or in writing), misuse or alteration or repair of the Goods without MTCS's prior written approval.

In respect of the provision of Services: -

- (c) MTCS shall act as agent only to the Client. Although MTCS will make every attempt to develop systems to the Clients instructions, MTCS does not warrant the performance or accuracy of any such systems and accepts no liability for damage or loss which arises as a consequence of the operation of the systems or the performance of associated software of hardware.

In respect of Software: -

- (d) By agreeing to purchase Goods comprising software the Client agrees to comply with the terms of the licence supplied with MTCS's software products.

In respect of all Goods and Services: -

- (e) MTCS shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods or Services has not been paid by the due date for payment.

- (f) Any claim by the Client which is based on any defect in the quality or condition of the Goods or Services or their failure to correspond with specification shall (whether or not delivery is refused by the Client) be notified to MTCS in writing within 7 days from the date of delivery or installation (whichever is later) and where the defect or failure was not apparent on reasonable inspection, within a reasonable time after discovery of the defect or failure. If delivery is not refused and the Client does not notify MTCS accordingly, the Client shall not be bound with the contract.

- (g) Where any valid claim in respect of any of the Goods or Services which is based on any defect in the quality or condition of the Goods or Services or their failure to meet specification is notified to MTCS in accordance with these conditions MTCS shall be entitled to replace the Services or Goods (or the part in question) free of charge or at MTCS's sole discretion, refund to the Client the price of the Goods or Services (or a proportionate part of the price), but MTCS shall have no further liability to the Client.

- (h) Except in respect of death or personal injury caused by MTCS's negligence, MTCS shall not be liable to the Client by reason of any representation or any implied warranty, condition or other term, or any duty at common law or under the express terms of the contract, for any consequential loss or damage (whether for loss of profit or otherwise) costs expenses or other claims for consequential compensation whatsoever and whether caused by the negligence of MTCS, its employees or Agents or otherwise which arise out of or in connection with the supply of the Goods or Services or their use or resale by the Client, except as expressly provided in these Conditions.

- (i) MTCS shall not be liable to the Client or be deemed to be in breach of the contract by reason of any delay in performing or where any failure was due to any cause beyond MTCS's control, without prejudice to the generality of the foregoing the following shall be regarded as causes beyond MTCS's reasonable control: -

- (i) act of god, explosion, flood, tempest, fire or accident;
- (ii) war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- (iii) acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- (iv) import or export regulations or embargoes;
- (v) strikes, lockouts or other industrial actions or trade disputes (whether involving employees or MTCS or a third party);
- (vi) difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- (vii) power failure or breakdown in machinery;
- (viii) subject as expressly provided in these conditions, all warranties, conditions or other terms in respect of the Goods or the installation implied by statute or common law are excluded to the fullest extent permitted by law.

12. Patent Rights

The sale of the Goods and the publication or any information or technical data relating thereto does not imply freedom from patent, registered design or other industrial property rights in respect of any particular application of the Goods.

13. Returned Goods

If MTCS agrees to accept returns other than defective Goods under the warranty contained in clause 11 they must be returned at the Client's expense in original condition and if tested by MTCS will be subject to a minimum charge of 30% of invoice price together with VAT thereon if applicable.

14. Insolvency of the Client

- (a) This clause applies if: -
- (i) the client makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
- (ii) an encumbrance takes possession, or a receiver is appointed, of any of the property or assets of the Client; or
- (iii) the Client makes ceases, or threatens to cease, to carry on business; or
- (iv) MTCS reasonably apprehends that any of the events mentioned above is about to occur in relation to the Client and notifies the Client accordingly.
- (b) If this clause applies then, without prejudice to any other right or remedy available to MTCS, MTCS shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Client and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement to the contrary.

15. Law

Any question relating to any quotation or any contract subject to these Conditions or agreed amendment of these Conditions shall be determined in all respects by the laws of England and the parties agree to submit to the exclusive jurisdiction of the English Courts.