

Terms&Conditions.
From HBP Systems Limited



Effective from 6th July 2011.

1. Definitions

"Contract" – means the contract entered into between the Customer and the Supplier for the sale of Goods and/or supply of services as specified in the Order Agreement and/or the Order & Contract in accordance with these Terms.

"Contractual Start Date" – means the date notified to the Customer in writing, which shall be specified on the Order Agreement and/or Order & Contract once the contractual start date has been agreed.

"Credit Application Form" – means the form supplied to the Customer which is to be completed by every Customer.

"Customer" – means the person/company who accepts the Supplier's written terms for the sale and/or supply of goods and services, or whose written order in respect thereof is accepted by the Supplier.

"Equipment" – means all or part of the Software, network or hardware as provided to the Customer and/or specified in the Contract.

"Goods" – means the computer hardware, Software and related equipment as supplied by the Supplier in accordance with these Terms.

"Installation Address" – means the address specified in the Customers Order Agreement and/or Order & Contract at which the Equipment is located and where services are to be provided or such other address as may be agreed in writing by the Supplier.

"Licensed Software" – means all software, supplied or implemented of which is provided in accordance with these terms and conditions and the licence of the Software Provider.

"Master Password" – means the password used solely by the Supplier's employees for access to the Network.

"Network" – means the network of computers and devices used by the Customer for the use of the Software.

"Normal Working Hours" – means 09.00 to 17.00 Monday to Friday but excluding all public, bank holidays and christmas closing.

"Order Agreement" – means the form completed by the Supplier for Goods that are sold to the Customer with no Contract and/or no quotation, which is to be signed by the Customer.

"Order & Contract" – means the form completed by the Supplier for Goods that are sold with or without a Contract and/or a quotation, which is to be signed by the Customer.

"Service and Support" – means the service and/or support provided by the Supplier in accordance with the Order Agreement and/or the Order & Contract and these Terms.

"Software":- means the software developed and licensed by the Supplier or developed and licensed by a third party, which is to include any bespoke software specifically supplied to a Customer.

"Software Provider" – means the Supplier or any other third party, for which the Supplier has agreed to provide support, in accordance with the Service and Support.

"Supplier" – means HBP Systems Limited or such other group company as may be notified to the Customer from time to time.

2. General

- 2.1. Any terms sought to be imposed or varied by either party shall not be incorporated in to the Contract and shall have no effect unless agreed to in writing by the other party.
- 2.2. Acceptance of these terms and conditions may be made by the Customer either in writing, fax or by e-mail to the Supplier, or upon the signing of the Order Agreement and/or the Order & Contract and the Credit Application Form.
- 2.3. The Customer shall be deemed to have accepted and be subject to these terms and conditions from the Contractual Start Date, or the signing of the Order Agreement and/or the Order & Contract, whichever is the earlier.
- 2.4. Headings in these terms and conditions are for convenience only and have no effect on the interpretation.

3. Price

- 3.1. The price of the Equipment, Software and/or Service and Support provided in accordance with these Terms shall be provided by the Supplier on the Customers Order Agreement and/or the Order & Contract attached hereto.
- 3.2. Unless otherwise agreed in writing between the Customer and the Supplier,

quotations provided by the Supplier shall be valid for 30 days from the date of issue and are exclusive of VAT and any other relevant taxes which shall be payable by the Customer in addition thereto.

- 3.3. The Supplier reserves the right to increase the prices of the Equipment, Software and/or Service and Support in any subsequent year, where the price of the Equipment, Software and/or Service and Support has increased, and/or in any other circumstances beyond the control of the Supplier.

4. Payment

- 4.1. Payment will be made by the Customer on the date(s) specified and agreed in writing between the Customer and the Supplier at the time of order for the Equipment, Software and/or Service and Support required in accordance with these Terms.
- 4.2. For the avoidance of doubt, and subject to any terms specified in the Order Agreement and/or the Order & Contract, if no payment date(s) have been agreed in writing then payment will be made by the Customer within 30 days after the issue of an invoice by the Supplier.
- 4.3. The time stipulated for payment shall be of the essence of the Contract, failure to pay within the period specified shall entitle the Supplier to charge the Customer for costs and expenses incurred in recovering late payments, and to charge interest at the rate then in force pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 as at the due date.
- 4.4. The Supplier shall also be entitled to charge interest on overdue invoices from the date when payment becomes due from day to day until the date of payment at a rate of 8.05% per annum above the base rate of the Bank of England, such interest to be paid on a monthly basis on all balances outstanding on the 28th of each calendar month, subsequent to the agreed payment period.
- 4.5. If the Customer shall fail to make any payment due to the Supplier on its due date then the Supplier shall reserve the right to cancel/suspend the use of the Software and/or any further performance of any obligations by the Supplier to the Customer. The Supplier will be entitled to cancel/suspend the use of any Software or performance of any obligations of the Supplier in the event that there are sums owing by the Customer in respect of any other Equipment/Software and/or Service and Support provided by or on behalf of the Supplier to the Customer.
- 4.6. Any discount offered by the Supplier at the time of order will be negated if the terms of payment as referred to above are not adhered to by the Customer.

5. Risk

As soon as the Supplier has delivered the Equipment and/or Software to the Installation Address, the risk in the Goods will pass to the Customer and they will be responsible for the same and the Supplier will have no liability for any loss, damage or destruction howsoever caused thereafter.

6. Ownership of Goods

- 6.1. Title to the Goods will not pass to the Customer until the Supplier has received cleared payment in full in respect of all other Goods and/or Service and Support provided to the Customer for which payment is then due.
- 6.2. The Supplier shall have the right to enter upon any premises of the Customer or any third party where Equipment/Software is stored, in order to repossess and recover the Equipment/Software, where the Customer has failed to make payment in accordance with these terms and conditions and where title has not yet passed to the Customer.
- 6.3. Until such time as title of the goods have passed to the Customer, the Customer will so far as practicably possible, store the Equipment/Software separately from those of the Customer and third parties, so as to be easily identifiable as the Suppliers goods.
- 6.4. Equipment and Software supplied to the Customer are not to be copied, modified or duplicated for resale by the Customer, any profits received in breach of these terms shall be paid into a separate bank account and held on trust for the Supplier.

7. Delivery

- 7.1. Delivery of the Equipment and/or Software shall take place when the Supplier delivers the Equipment and/or Software to the Installation Address.
- 7.2. The Supplier will aim to deliver the Equipment and/or Software by the date quoted for delivery; however, delivery times are not guaranteed and delivery times are not of the essence of the Contract.
- 7.3. The Supplier shall not be liable for any loss or damage howsoever caused to the Customer, should the Supplier be unable to deliver the equipment within the quoted period.

8. Software

- 8.1. The Supplier agrees to provide the Customer with Licensed Software.
- 8.2. If the Software supplied is not owned by the Supplier then the Customer shall be required to enter into an end-user licence agreement with the owner of the related software.
- 8.3. Defects in the software are the liability of the software provider and not the Supplier. The Supplier will assist the Customer in justified claims against the software providers but will not be responsible for any liability, loss of profits, loss of business or any other indirect, special or consequential loss or damage howsoever caused arising from the use of the Software, or failure to provide Software or any costs supporting a claim.
- 8.4. Any modifications by the Customer or third parties to the Software must be approved by the Supplier to ensure that the Supplier will continue to provide Service and Support to the Software and/or Equipment.
- 8.5. For the avoidance of doubt, support contracts for accounting software do not provide for accounting or tax advice, but rather help and support on the use of the software.

9. Installation

- 9.1. The Equipment shall be installed by the Supplier at the Installation Address, and subsequent Service and Support and maintenance and all other services shall be provided at this address.
- 9.2. If the equipment is re-sited to a different address following installation then the Supplier reserves the right to cancel the contract without notice or penalty, irrespective of the age of installation should the Supplier deem the new location outside of the Suppliers service area.
- 9.3. The Customer shall be responsible for the installation area and the safety and supply of all electrical appliances. Should the electrical supply be deemed sub-standard by the Supplier, the Customer will at their own expense provide all the necessary equipment or facilities to provide all correct electrical supply to the satisfaction of the Suppliers specification.
- 9.4. If the Supplier is prevented or delayed from carrying out the installation through no fault of the Supplier then the Supplier will be entitled to charge the Customer at the Suppliers current prices for the additional works carried out by or on behalf of the Supplier to enable it to complete the installation and for compensation for any losses or costs incurred by the Supplier by reason of such delay.
- 9.5. Upon receipt of a request from the Supplier, whether in writing, by fax or email, or by any other means, the Customer shall within (7) days thereof, provide the Supplier with a copy of the insurance policy that is in place in respect of the premises defined as the Installation Address.

10. Warranty

- 10.1. The Supplier warrants that the Equipment is free from defect in materials and workmanship for a period of 90 days from the date of delivery.
- 10.2. The Supplier shall, having received notice in writing from the Customer of any such defect within 90 days of delivery, at its own cost repair and replace the equipment as the Supplier deems necessary to meet the obligations of the schedule of equipment detailed overleaf.
- 10.3. If the Customer fails to notify the Supplier of any such defect within 90 days, the Customer will not be entitled to reject the equipment and the Supplier shall have no liability for such defect.
- 10.4. The above warranty shall only apply where the Goods have been used in accordance with the relevant manufacturer's specifications and any express instructions from the Supplier, and will not apply to any Goods that have been repaired or modified by anybody other than the Supplier.

11. Service and Support

- 11.1. The Supplier shall provide Service and Support in respect of the Equipment and/or Software within the Suppliers Normal Working Hours.
- 11.2. Any Service and Support that is supplied by the Supplier outside the Suppliers Normal Working Hours will be deemed to be outside of the contracted hours and will be charged to the Customer at the rates applicable.
- 11.3. The Supplier shall at all times use its best endeavours to respond to a Customer request in a reasonable time; however, time is not of the essence in respect of response times

and the Supplier shall have no liability for any loss of any nature howsoever caused due to a delay or failure to provide the Service and Support.

- 11.4. The Customer shall be responsible for protecting their network against computer viruses and/or spyware, and the Supplier reserves the right to charge at their hourly rate for the removal of any viruses and/or spyware and for the cleaning of the Customers networks from any viruses and/or spyware, and also to charge for the re-installation and set up of data following any such infection.
- 11.5. If the Supplier is requested to attend by the Customer to provide support or otherwise and is subsequently prevented or delayed from carrying out their requested tasks through no fault of the Supplier then the Supplier will be entitled to charge the Customer at the Suppliers current prices for the additional works carried out by or on behalf of the Supplier to enable it to complete the tasks and for compensation for any losses or costs incurred by the Supplier by reason of such delay, except where said delay has been notified to the Supplier at least 48 hours in advance.

12. Server and Support Exclusions

- 12.1. The Suppliers obligations in respect of Service, Support and maintenance of the Equipment and/or Software will not extend to following:
 - 12.1.1 Any Equipment and/or Software not specified in the Order Agreement and/or the Order & Contract, and which includes any part of the Equipment which is changed in any way from the description in the Order Agreement and/or the Order & Contract.
 - 12.1.2 Any necessary work arising as a consequence of a breach by the Customer of any of its obligations under these Terms.
 - 12.1.3 Any necessary work arising from a willful act or omission in respect of the Equipment and/or Software, or any other cause, except for fair wear and tear, which is not due to the neglect of the Supplier.
 - 12.1.4 Any necessary work arising as a consequence of any maintenance or repair work undertaken in respect of the Equipment and/or Software by a third party not previously approved in writing by the Supplier.

13. Consumables

Any items not detailed in the Order Agreement and/or the Order & Contract shall be the sole responsibility of the Customer, and should the Supplier deem such consumables defective and/or detrimental to the Equipment, the Customer shall be required to replace such consumables at their own expense

14. Liability

- 14.1. Subject as expressly provided in these terms and conditions, where Goods are sold to a person acting as a Consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law, but nothing in these terms and conditions will affect the liability of the Supplier for any fraudulent misrepresentation.
- 14.2. The Customer acknowledges that the Supplier is acting as a supplier only and that the Customer has agreed that the equipment is suitable for their requirements.
- 14.3. Except in the case of death or personal injury caused by the Suppliers negligence, the Supplier will have no liability to the Customer for any loss of business, loss of profit or any indirect, special or consequential loss of the Customer howsoever caused, which is to include any delay or failure to provide the Equipment or to provide Service and Support.
- 14.4. The Customer shall be responsible for all data stored on the Equipment and the Software, and all back up procedures and the Supplier shall have no liability under these terms and conditions for any loss of data, loss or corruption of documents, viruses, hacking, loss of business, loss of profits or any indirect, special or consequential loss howsoever caused.
- 14.5. The Customer shall be liable for all and any costs required to repair data in the event of missing and/or corrupt back-up data.
- 14.6. The Supplier will have no liability where the requirement for service and/or support is the result of any action or inaction of the customer, their employees or any third party.
- 14.7. All domain registrations are subject to the terms and locations of Nominet located on <http://www.nominet.org.uk/uk-domain-names/registering-uk-domain/legal-details/terms-and-conditions-domain-name-registration>

15. Lease

The Supplier shall allow the Customer to lease, rent or finance the Equipment and/or

Software via a third party provided that full payment shall be received by the Supplier in accordance with condition 4. If any payments in respect of the Equipment and/or Software are to be paid by a Third Party the Customer agrees that immediately on delivery of the Equipment and/or Software the Customer will sign the acceptance note for the leasing/finance company or other third party and that they will take all steps as may be necessary to ensure that payment is made to the Supplier for the Equipment/Software in accordance with these Terms and Conditions.

16. Networks

- 16.1. The Supplier reserves the right to use a Master Password in order to remotely access the Customers Network for purposes associated with the Suppliers obligations as specified in the Contract.
- 16.2. The Master Password shall only ever be used by employees of the Supplier for purposes associated with the Supplier's obligations specified in the Contract.
- 16.3. The Supplier will have no liability for any loss of business, loss of profit or any indirect, special or consequential loss of the Customer caused by use of the Master Password by employees of the Supplier and/or non-employees of the Supplier.

17. Term

The Service and Support Contract will automatically renew on the anniversary date of the Service and Support Start Date as will be notified to the Customer in due course and shall continue to be payable until terminated in accordance with condition 18.1, 18.2 or 18.3.

18. Termination

- 18.1. The Customer shall be entitled to terminate the Contract by giving the Supplier not less than 180 days notice in writing, such notice to expire on or before the anniversary date.
- 18.2. The Supplier shall be entitled to terminate the Contract immediately and without notice if the Customer has committed any material breach under the Contract and (in the case of a breach which is capable of remedy) failed to remedy the same within 30 days of receipt of written notice specifying the nature of the breach and requiring it to be remedied.
- 18.3. The Supplier reserves the right to terminate all Contracts, immediately and without notice, should the Supplier consider the Equipment and/or Software to be beyond economical repair, subject to condition 18.

19. Pre-Inspection

- 19.1. Prior to the commencement of the Service and Support obligations of the Supplier, the Supplier may during Normal Working Hours inspect the Equipment, or any part of it, at the Installation Address, in order to confirm whether, in the Suppliers reasonable opinion, it is in full working order and in accordance with the manufacturer's requirements.
- 19.2. If the Supplier is of the opinion that work is required to be carried out to the Equipment, the Customer shall carry out such work at their own expense within 30 days of notice from the Supplier, failure to carry out such work shall entitle the Supplier to provide the Customer with written notice that the Equipment concerned shall be excluded from Service and Support Contract.

20. Beyond Reasonable Repair

- 20.1. If the Equipment is considered to be beyond reasonable repair, or if spare parts are not readily available, or if faults and/or its conditions are such that it becomes necessary to replace the same, the Supplier shall be entitled to provide the Customer with written notice of the same, and at which point the obligations of the Supplier in respect of Service and Support shall be suspended.
- 20.2. If the Customer fails or refuses to replace the Equipment that is beyond reasonable repair within thirty days of notification from the Supplier, then the Supplier shall be entitled to exclude such Equipment from the Contract and to refund to the Customer a fair proportion of any charges which have been paid by the Customer to the end of the notice period.
- 20.3. The provisions of 20.1 and 20.2 will equally apply in respect of any Software included within the Equipment which, in the reasonable opinion of the Supplier is no longer economically practicable to maintain or requires upgrading or updating.

21. Governing Law and Jurisdiction

Parties to this Contract agree to submit to the exclusive jurisdiction of the courts of England and Wales in respect of any dispute arising out of or in connection with this Contract.

22. Invalidity

If any part of these terms and conditions is unenforceable (including any provision which the Supplier excludes liability) the enforceability of any other part of these conditions will not be affected.

23. Data Protection

- 23.1. The Supplier and the Customer will ensure that they will comply at all times with the requirements of the Data Protection Act 1998 in relation to their obligations under this Contract.
- 23.2. The Customer consents to the computer storage and processing of personal data by the Supplier in connection with this Contract and to the transmission of data across the Suppliers company and business partners for the purpose of the Suppliers legitimate interests including statistical analysis, marketing of our services and credit control. If you breach this contract, your personal data may be disclosed or passed to third parties, to the extent necessary to assist recovery procedures.

24. Non-solicitation

The Customer agrees that should any member of staff currently employed by the Supplier, be recruited by the Customer, or by any person or entity to whom such person(s) in introduced directly or indirectly by the Customer, the Customer will pay 25% plus VAT of the current employees salary as compensation to the Supplier.

25. Training and Support

- 25.1. The Customer shall designate two of their employees, who shall be trained by the Supplier in respect of the use of the Equipment and/or Software from the date of installation.
- 25.2. Should any new employees of the Customer require training then this will be deemed outside of the Service and Support Contract, and the Supplier reserves the right to charge the Customer at the Suppliers current rates for any such additional training.
- 25.3. The Customer acknowledges that the Suppliers support desk is only to be contacted by those employees who have received the relevant training in respect of the Equipment and/or Software.

26. Notices

A notice required or permitted to be given by either party under this Contract shall, other than expressly specified, be in writing addressed to the other party at its registered office or principal place of business or such other address as may be notified to the party giving the notice.

27. Entire Agreement

These Terms and Conditions contain the entire agreement between the parties relating to the subject matter and supersedes all previous agreements, arrangements, undertakings or proposals, oral or written between the parties relating to the subject matter. The Customer acknowledges that in entering into the Contract it does not rely on any representation, warranty, agreement or other provision except as expressly set out in these Terms and Conditions