



## Supply/Invoicing Terms & Conditions

**Last updated: 03/01/2010**

### **INTERPRETATION**

1. IN these Conditions:-

- (1) The Company means Digital Parsnip Limited
- (2) The Equipment means the items of hardware and equipment or any of them described in the Contract.
- (3) The Software means the computer programs described in the Contract.
- (4) The Services means the installation, maintenance or other services described in the Contract.
- (5) The Customer means the person, firm or company with whom the Contract is made by the Company.
- (6) The Contract means the contract between the Company and the Customer for the sale or supply of Equipment and/or Software and/or Services(as the case may be).
- (7) Working Days means Monday to Friday excluding Bank and other public holidays in England.

### **GENERAL**

2. THESE Conditions shall be deemed to be incorporated in all contracts of the Company to sell or supply Equipment and/or Software and/or Services. In the case of any inconsistency with any order, letter or form of contract sent by the Customer to the Company or with any terms and conditions contained or referred to any communication between the Customer and Company (whatever may be their respective dates) or implied by trade custom practice or course of dealing the provisions of these Conditions shall prevail unless expressly varied in writing and signed by a director or other duly authorised representative on behalf of the Company. Any concession made or latitude allowed by the Company to the Customer shall not affect the strict rights of the Company under the Contract.

### **ORDERS**

3. NOTWITHSTANDING that the Company may have given a detailed quotation no order shall be binding on the Company unless and until it has been accepted in writing or by electronic means by a director or other duly authorised representative on behalf of the Company.

### **PRICES**

4. (1) THE prices payable for Equipment, Software or Services shall be those specified in the Customer Quotation.
- (2) The Company shall have the right at any time to withdraw any discount from its normal prices and/or to revise prices to take into account increases in cost including (without limitation) costs of any goods, materials, carriage, labour or overheads, the increase or imposition of any tax, duty or other levy and any variation in exchange rates.
- (3) Unless otherwise agreed all prices are exclusive of carriage, Value Added Tax and an other duties or taxes which the Customer shall be liable to pay to the Company.

### **TERMS OF PAYMENT**

5. (1) PAYMENT shall, unless otherwise agreed in writing or stated on the invoice/quotation, be made in full without any deduction or set-off within 30 days of the date of the invoice save payment shall become due in any event forthwith upon the occurrence of any of the events referred to in Condition 17 hereof.
- (2) Any extension or credit allowed to the Customer may be changed or withdrawn at any time: (a) In the event of withdrawal any sums outstanding at that date will be payable immediately.
- (3) Notwithstanding any of the terms and conditions hereof the time of payment shall be of the essence of the Contract.
- (4) A £35 plus VAT administration charge shall be immediately payable on all overdue accounts every 14 days they remain overdue.
- (5) Interest shall be payable on overdue accounts at the rate of 4% over LloydsTSB Bank PLC base rate to run from the due date for payment thereof until receipt by the Company of the full amount whether or not after judgement.
- (6) Where an account requires litigation to collect an overdue debt an administration fee of £100 plus V.A.T. at the prevailing rate will be payable.

### **DELIVERY AND PERFORMANCE**

6. (1) ALL times or dates given for delivery of the Equipment and/or Software and for performance of the Services are given in good faith and shall not be of the essence of any contract.
- (2) Delivery of the Equipment and Software and performance of the Services shall be at the Customer s premises unless otherwise stipulated or agreed by the Company.

- (3) If the Customer refuses or fails to take delivery of Equipment, Software or Services tendered in accordance with the Contract the Company shall be entitled to immediate payment in full for the Equipment, Software or Services of which the Customer refuses or fails to take delivery and the Customer shall in addition to the invoice price pay all costs of such storage and any additional costs incurred as a result of such refusal or failure. Where the parties agree release of Software by means of downloading from compact disk or online facility the following terms shall also apply.
- (a) the Company shall issue a password to the Customer for use when placing orders and downloading Software.
- (b) It is the Customer's responsibility to ensure that the said password is used only by those authorised by the Customer to place orders and download Software. The Company shall have no liability in respect to orders placed for Software downloaded by persons not so authorised by the Customer.
- (c) subject to payment of any applicable license fees due in respect of Software, any license shall commence on acceptance of an order by the Company in accordance with this Contract.
- (4) The Company may make and the Customer shall accept partial deliveries of Equipment and/or Software. Each delivery shall be considered to be the subject of a separate contract and failure by the Company to make any one or more deliveries in accordance with the Contract or any claim by the Customer in respect of any one or more deliveries shall not entitle the Customer to treat the Contract as whole as repudiated.
- (5) Where the Equipment and/or Software is handed to a carrier for carriage to the Customer or to United Kingdom port for export any such carrier shall be deemed to be an agent of the Company and not of the Customer for the purposes of Sections 44.45 and 46 of the Sale of Goods Act 1979.
- (6) The Customer shall prepare the area of delivery and installation for the Equipment and provide the Company (including its employees, agents and sub-contractors) with free access to the place of installation and with free access to any services or facilities that may be required to deliver and install the Equipment. Where the same has not been provided the Company shall be entitled to charge for the same.
- (7) The Customer shall provide the Company (including its employees, agents and subcontractors) with access to the Equipment and the Software at the agreed premises for the purposes of inspections and maintenance of the Equipment and Software and with all necessary information and support that may reasonably be required by the Company for the performance of its obligations hereunder.

#### **RISK**

7. FROM the time of delivery by the Company or its carriers to the Customer or its agent the Equipment and the Software shall be at the risk of the Customer who shall be solely responsible for the custody and maintenance thereof.

#### **TITLE**

8. ALL Equipment and Software is supplied to the Customer by the Company on the following terms:

- (1) the Equipment and Software shall remain the property of the Company until payment is made of sums due to the Company under all contracts between the Company and the Customer.
- (2) before title has passed under the terms of Condition 8(1) the following shall apply
- (a) the Customer shall hold the Equipment and Software as a bailee for the Company;
- (b) the Customer shall store the Equipment and Software such that they are separate and identifiable from other stock held by the Customer and shall label them as belonging to the Company ;
- (c) without prejudice to the rules of equity relating to tracing the Company shall be beneficially entitled to the proceeds of sale or disposal of the Equipment and Software so that the proceeds or any claim therefor shall be assigned to the Company and until and subject to such assignment shall be held on trust in a separate identified bank account opened by the Customer for this purpose and such proceeds shall not be mingled with other monies or paid into an overdrawn bank account;
- (d) the Company is hereby licensed to enter upon any premises in the ownership, possession or control of the Customer at any time in order to recover the Equipment and Software. The Company shall have the right to resell the same, such right being in addition to any power of sale arising by operation of law or otherwise.

#### **SOFTWARE LICENSE**

9. (1) UNDER no circumstances does the use or acquisition of the Software transfer the copyright or any other intellectual property rights in the Software or any documentation relating thereto to the Customer or any third party.
- (2) The Customer shall enter into such licenses of the Software as the proprietors of the copyright or other intellectual property rights therein may require and the supply of the Software to the Customer shall be conditional thereon.

#### **THIRD PARTY RIGHTS**

10. (1) THE Customer shall indemnify the Company against all costs, claims and damages incurred by or made against the Company as a direct or indirect result of the carrying out of the Services or any other work required to be done on or to the Equipment or the Software in accordance with the requirements or specifications of the Customer involving any infringement or alleged infringement of any patent, trade mark, design right, copyright, or other proprietary right of any third party ( Third Party Proprietary Rights )
- (2) In the event that the Equipment or the Software are or may be the subject of any Third Party Proprietary Rights the Company shall be obliged to transfer or license (as the case may be) to the Customer only such title as the Company may have and the Company shall have no liability to the Customer for any infringement or alleged infringement thereof.

(3) The Customer shall notify the company forthwith of any claim made or action brought or threatened alleging infringement of any Third Party Proprietary Rights. The Company shall have the right to control and/or conduct any such proceedings in such manner as it shall reasonably determine. The Customer shall provide all such reasonable assistance in connection therewith as the Company may request. The cost of any such proceedings shall be borne in such proportions as the parties shall determine.

#### **SPECIFICATIONS AND INFORMATION**

11. (1) UNLESS expressly agreed in writing by the Company all descriptions, drawings, designs, specifications and particulars of weight and dimensions submitted by the Company are approximate only and the Company shall have no liability in respect of any deviation therefrom. The Company accepts no responsibility for any errors, omissions or any other defects in any descriptions, drawings, designs or specifications not prepared by the Company and the Company shall be indemnified by the Customer against any and all liabilities and expenses incurred by the Company arising therefrom.

(2) All drawings, designs, specifications, manuals, software, listings, object code or source code and information imparted by the Company are confidential and shall not be disclosed to any third party without the Company's prior written consent.

#### **LIABILITY**

12. (1) THE Company shall not be liable to the Customer:

(a) for shortages in quantity delivered unless the Customer notifies the Company of any claim for short delivery within 7 Days of receipt of the Equipment and/or the Software:

(b) for damage to or loss of the Equipment and/or the Software or any part thereof in transit (where the Equipment or Software is carried by the Company's own transport or by a carrier on behalf of the Company) or for any claim that the Equipment or Software is not in accordance with the Contract unless the Customer shall notify the Company of any such claim within 14 Days of receipt of the Equipment or the Software or (in the case of non-delivery) within 14 Days of receipt of the invoice therefor.

(c) for defects in the Equipment and/or Software caused by fair wear and tear, abnormal

conditions of storage or use by the Customer or by any act, neglect, or default by the Customer, or of any third party:

(d) for other defects in the Equipment or the media upon which the Software is supplied unless notified to the Company within 14 Days of receipt of the Equipment or Software by the Customer.

(e) for any Services performed defectively unless the Customer shall notify the Company of any such claim within 30 Days of performance of such Services.

(2) In the case of Equipment not manufactured and Software not developed by the Company, the Company will pass on to the Customer to the extent that it is able any benefits obtainable under any warranty given by the Company's supplier provided that payment has been made for the relevant Equipment and/or Software. In particular no warranty is given that Software and Equipment will process dates and date dependent data beyond the Year 2000 or that Software or Equipment working together or as part of an integrated system, including where the company configures Software and Equipment whether in accordance with the customer's instructions or otherwise, will process such dates and date dependent data save to the extent set out in any warranty that may have been passed to the customer from the manufacturer and/or supplier of such Software and Equipment.

(3) In the event of a valid claim under clause 12(1) the Company undertakes:

(a) at its option to make good any shortage or non-delivery and/or as appropriate to either credit the Customer in full the price paid for the item of Software or Equipment found to be damaged or defective or repair such item or supply a replacement thereof free of charge to the Customer: and (b) at its option either to credit to the Customer in full the price paid for the services found to have been defectively performed or to re-perform such Services free of charge to the Customer.

(4) In no event shall the Company be under any liability whatsoever and howsoever arising for any loss of use or loss of profit, interruption of business or any other indirect, special or consequential losses of any type arising or alleged to have arisen out of any act or default of the Company in respect of its obligations hereunder.

(5) Subject to Condition 12(8) hereof the Company's aggregate liability to the Customer hereunder or otherwise arising whether for negligence, breach of contract, misrepresentation or otherwise shall in no circumstances exceed the cost of the defective, damaged or undelivered Equipment and/or Software and/or defective Services which give rise to such liability (as determined by the net price invoiced to the Customer) in respect of any occurrence or series of occurrences.

(6) Subject to the foregoing and to Conditions 12(8) and 12(9) hereof all conditions warranties and representations express or implied by statute common law or otherwise in relation to the Equipment and the Software are hereby excluded and the Company shall be under no liability to the Customer for any loss, damage or injury direct or indirect resulting from defective material faulty workmanship or otherwise howsoever arising and whether or not caused by the negligence of the Company, its employees or

(7) The Company's prices are determined on the basis of the limits of liability set out in this condition. The Customer may by written notice to the Company request the Company to agree a higher limit of liability provided that insurance cover can be obtained.

(8) Nothing in these Conditions shall have the effect of excluding or restricting any liability of the Company for death or personal injury resulting from its negligence insofar as the same is prohibited by United Kingdom statute.

(9) Where the Equipment and/or Software are sold or the Services are provided in the course of a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Customer are not affected by these Conditions.

#### **PACKAGING**

13. (1) THE Customer shall meet the cost of any special packaging requested by the Customer or of any packaging rendered necessary by delivery by any means other than the Company's normal means of delivery.

(2) The Company shall be entitled to invoice the Customer for the cost of all pallets and other returnable packaging materials unless the same are returned to the Company in good condition carriage paid within 30 days of the date of delivery.

#### **RETURNS**

14. (1) THE Company will allow the Customer to return Equipment and Software within 14 Days of receipt, if it is found to be defective within that period. Returns or repairs beyond this time will be subject to the appropriate manufacturer warranty

(2) The Customer does not have any right to return Equipment and/or Software solely from change of mind.

(3) EQUIPMENT and/or Software which is supplied in accordance with the Contract cannot be returned unless the Customer obtains from the Company a returns authorisation number. Each returns authorisation number will remain valid for 14 days from issue. The Company will not accept any Equipment or Software returned outside the 14 day period. Returns shall be sent to the Company's premises at the Customer's risk and expense. The Company reserves the right to refuse to accept such returns if they are not returned in their original packaging in a clean, unused, undamaged and resale-able condition.

#### **EXPORT TERMS**

15. (1) SAVE as herein provided or otherwise agreed in writing between the Company and the Customer, Equipment and/or Software which is supplied for export from the United Kingdom shall be charged for and delivered FOB the air or sea port of shipment and the Company shall not be obliged to give the Customer the notice specified in Section 32 (3) of the Sale of Goods Act 1979.

(2) The Customer shall be responsible for complying with any legislation or regulations governing the importation of the Equipment and/or Software into the country of destination and for the payment of any duties thereon. In particular, if any license or consent of any government or other authority shall be required for the acquisition, carriage or use of the Equipment or the Software by the Customer, the Customer shall obtain the same at its own expense and if necessary produce evidence of the same to the Company on demand. Failure to do so shall not entitle the Customer to withhold or delay payment of the price. Any additional expenses or charges incurred by the Company resulting from such failure shall be for the Customer's account.

#### **FORCE MAJEURE**

16. THE Company shall not be liable for any delay or failure in performance of its obligations under the Contract which is due to or results from any circumstances beyond its reasonable control. In any such event the Company shall be entitled to delay or cancel delivery of the Equipment and/or Software or performance of the Services. If due to any such event the Company has insufficient stocks to meet all its commitments the Company may apportion available stocks between its Customer's at its sole discretion.

#### **INSOLVENCY AND DEFAULT**

17. IF the Customer shall be in breach of any of its obligations under the Contract or if any distress or execution shall be levied on the Customer's property or assets or if the Customer shall make or offer to make any arrangement or composition with his creditors or commit any act of bankruptcy or if any bankruptcy petition be presented against him or (if the Customer is a company) if any Resolution or Petition to wind up such company shall be passed or presented or if a receiver, administrative receiver or administrator of the whole or any part of such company's undertaking property or assets shall be appointed or if anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the Customer, the Company in its discretion and without prejudice to any other right or claim may by notice in writing determine wholly or in part any and every contract between the Company and the Customer or may (without prejudice to the Company's rights subsequently to determine the Contract for the same cause should it so decide) by notice in writing suspend further performance of the Contract until any defaults by the Customer be remedied.

#### **DEDUCTIONS**

18. THE Company shall have the right (without prejudice to any of its other rights) to deduct from or set-off against any monies due to the Customer under any contract any sum or sums which the Customer is liable to pay to the Company under any contract, such right to be exercisable by the Company giving to the Customer written notice thereof.

#### **HEALTH AND SAFETY**

19. WHERE any of the Company's employees are admitted to the Customer's premises pursuant to the Contract, the Customer undertakes that it will take such measures as are necessary to ensure that, as far as reasonably

practicable, its premises and any plant, equipment, articles or substances in such premises are safe and without risks to the health of the Company's employees. The Customer shall indemnify the Company against all loss, claims and demands suffered by the Company as a result of any breach of this Condition by the Customer.

**CANCELLATION**

20. SAVE as provided in Conditions 16 and 17 hereof contracts may not be cancelled except by agreement in writing of both parties and upon payment to the Company of such amount as may be necessary to indemnify the Company against all loss resulting from the said cancellation.

**SEVERABILITY**

21. IF at any time one or more of the above Conditions becomes in whole or in part void, invalid, or unenforceable then the remainder of the Contract shall nevertheless be valid and enforceable.

**NOTICES**

22. ALL notices hereunder shall be in writing and shall be given by hand or sent by prepaid first class post, or telex or facsimile, or other electronic means to the party concerned at its last known address. Notices sent by first class post shall be deemed (in the absence of evidence of earlier receipt) to have been delivered forty-eight hours after despatch and notices sent by telex or facsimile shall be deemed to have been delivered on the first customary working day in the addressee's country following the day of its despatch.

**ASSIGNMENT**

23. THE Customer shall not assign or transfer the whole or any part of its rights or obligations under the Contract to any other person, firm or company.

**US GOVERNMENT REQUIREMENTS**

24. THE Customer is advised that the Equipment and/or Software may be subject to US Government export regulations. Accordingly the Customer warrants that any Equipment and/or Software will not be exported from the United Kingdom unless prior approval in writing has been obtained from all regulatory authorities at the Customer's own expense.

**GOVERNING LAW**

25. THE Contract shall be governed by and construed in accordance with English Law and the parties hereby submit to the non-exclusive jurisdiction of the English Courts.

If you require further information or clarification, please contact us.