

Terms & Conditions

The Company has agreed to grant the Customer a non-exclusive licence to use the computer software programs and associated documentation listed in the Order Form or Proposal/Quotation documents and to provide certain services to the Customer in respect of delivery of technical support and training upon the terms and conditions of this agreement. These terms and conditions shall not be amended in any way except with the prior written consent of the parties.

Operative provisions:

1. Definitions

1.1 In this agreement unless the context otherwise requires:

“Acceptance Date” means the Actual Delivery Date “Actual Delivery Date” means the date that the Licensed Program Materials and any Hardware are delivered by the Company to the Site or are available for collection from the Company’s premises by the Customer

“Additional Charges” means the charges at the Company’s rates from time to time for work undertaken on a time and materials basis

“the Company” means B.M. Software Solutions Limited t/a Business Micros whose principal address is at The Cross, Main Street, Penpont, Thornhill, Dumfries DG3 4BP

“the Customer” means the Company or other organisation identified in the Order Form, Proposal/Quotation documents

“CDPA” means Copyright Designs and Patent Act 1988

“the Database” means the database of information compiled by the Company and supplied to the Customer hereunder as amended by the Company from time to time

“Delivery Date” means the estimated date for the delivery of the Licensed Program Materials as set out in the Order Form, Proposal/Quotation documents

“Designated Equipment” means the machine identified by type and serial number in the Order Form

“Hardware” means any hardware ordered by and sold or supplied to the Customer as identified in the Order Form, Proposal/Quotation documents

“Licence Fee” means the price to be paid by the Customer to the Company for the Licensed Program Materials, the Services and any Hardware as set out in the Order Form, Proposal/Quotation documents as the same may be varied by the Company from time to time

“Licensed Programs” means the software program(s) in object code form identified in the Order Form, Proposal/Quotation documents

“Licensed Program Materials” means the Licensed Programs and the Program Documentation and unless otherwise specified the Database

“Order Form” means the Order Form, Proposal/Quotation documents setting out the Customer’s requirements

“Place of Use” means that part of the Customer’s premises at the Site where the Designated Equipment is installed and operated

“Program Documentation” means the instruction manuals, user guides and other information (identified in the Order Form, Proposal/Quotation documents) to be made available from time to time during this Agreement by the Company at its discretion in either printed or machine readable form to the Customer

“Program Specifications” means the technical specifications from time to time published by the Company in respect of the Licensed Programs

“Services” means the provision of support and training services as specified in the Order Form, Proposal/Quotation documents

“Site” means the address for delivery of the Licensed Program Materials set out in the Order Form, Proposal/Quotation documents or in the absence of such address the Company’s premises

“Passwords” means the reference programme(s) to be written into the Designated Equipment to avoid unauthorised use of the Licensed Programs

“Use” means the copying or transmission of the Licensed Programs or (where in machine readable form) the Program Documentation into the Designated Equipment for the processing of the instructions contained in the Licensed Programs or (as the case may be) the Program Documentation

“Year 2000 Conformity” shall have the meaning set out in the document published by the part of the British Standards Institution called DISC entitled ‘A Definition of Year 2000 Conformity Requirements’ and which has the reference PD2000- 1. In construing the meaning of this definition regard shall be had to the Amplification of the Definition and Rules set out in the same document.

2. Grant of licence and provision of Services

2.1 The Company in consideration of the payment by the Customer of the Licence Fee hereby as appropriate:

2.1.1 Grants to the Customer a non-exclusive licence to use the Licensed Programs (and where appropriate the Program Documentation) in connection with the Database upon the designated equipment and to possess and refer to the program documentation;

2.1.2 Undertakes to the Customer to provide the Services upon the terms and conditions of this agreement;

2.1.3 Agrees to supply the Hardware upon the terms and conditions of this agreement.

2.2 The Company reserves the right to make any changes in the Program Specification which are required to conform with any applicable statutory requirements.

2.3 The Company shall in every instance have the right to determine the lifetime of its products and services.

2.4 The Company shall have the right to terminate an order if it has not been able to install the goods and services within twelve months from the Company receiving confirmation of order and deposit. It is the customers' responsibility to pursue during that time for an installation date.

3. Licence Fee

3.1 The Licence Fee shall unless otherwise specified in the Order Form include the cost of (as appropriate):

3.1.1 The delivery of the Licensed Program Materials to the Site;

3.1.2 The provision of the Services;

3.1.3 The delivery of the Hardware

3.2 The Licence Fee (together with value added tax thereon) shall be payable by the Customer upon the Delivery Date.

3.3 Time for payment is of the essence. If the Company has a written agreement with the Customer that its products and services will be paid for by a Direct Debit option then refer to clause 3.7 & 3.9

3.4 The Company reserves the right to charge the Customer interest in respect of the late payment of any sum due under this agreement (as well after as before judgment) at the rate of 4% per annum above the base rate for the time being in force of The Royal Bank of Scotland plc from the due date therefore until payment.

3.5 No order or instruction accepted by the Company may be cancelled by the Customer except with the Company's prior written consent and where there is an agreed cancellation the Customer shall pay to the Company a sum representing the value of the work carried out by the Company to date but in any event not less than 20% of the Licence Fee.]

3.6 Payment shall not be withheld or deferred on account of any claim, counterclaim or set-off.

Support, Product & Services Subscription Payments

3.7 The company may offer the customer options to pay for support or products and services provided by the company by Direct Debit. The Direct Debit payments will be collected in advance to the value agreed. For Direct Debit, Debit and Credit Card payments we will collect the amount due automatically from your account each month (or as otherwise agreed).

3.8 The company may change your subscription payment for support at any time by giving you at least one months notice or if the customer agrees to the change in subscription following additional purchases of product and services. The customer has the right to cancel the Direct Debit providing Three months notice is given in writing to the company.

3.9 If the customer cancels payments we can suspend provision of products & services with immediate effect without giving written notice.

3.10 All products and services are provided by the company on the basis that the customer maintains a technical support contract with the company. Customers who do not have a

technical support contract in place for longer than a period of 3 years shall be deemed to have had fair use of the products and services and a re-installation fee equivalent to the purchase price at the time will become payable should the customer require to continue to use the companies products and services.

4. Delivery

4.1 The Company shall use all reasonable endeavours to deliver the number of copies of the Licensed Programs and the Program Documentation to the Site on the Delivery Date or as soon thereafter as is possible.

4.2 [The Company] may at its option install the Licensed Programs on the Designated Equipment at the Site and the Customer grants the Company unlimited access to the Site for this purpose, failing which the Customer shall be responsible for installation.

5. Technical support

5.1 For the duration of the period specified in the Order/Proposal form the Company shall provide in respect of each of the Licensed Programs those Services identified in the Order/Proposal form.

5.2 In respect of any faults, the Customer shall supply in writing to the Company a detailed description of any fault and the circumstances in which it arose forthwith upon becoming aware of the same.

5.3 Services shall in any event not be provided in respect of the diagnosis and rectification of any fault resulting from:

5.3.1 The improper use operation or neglect of either the Licensed Program Materials or the Designated Equipment;

5.3.2 The modification of the Licensed Programs or their merger (in whole or in part) with any other software;

5.3.3 The use of the Licensed Programs on equipment other than the Designated Equipment;

5.3.4 The failure by the Customer to implement recommendations in respect of or solutions to faults previously advised by the Company;

5.3.5 Any repair adjustment alteration or modification of the Licensed Programs by any person other than the Company without the Company's prior written consent;

5.3.6 Any breach by the Customer of any of its obligations under any maintenance agreement in respect of the Designated Equipment;

5.3.7 The Customer's failure to install and Use upon the Designated Equipment in substitution for the previous release any new release of the Licensed Programs immediately upon receipt of the same; or

5.3.8 The use of the Licensed Programs for a purpose for which they were not designed.

5.4 The Company shall upon request by the Customer provide the Services notwithstanding that the fault results from any of the circumstances described in clause 5.3 above. The Company shall in such circumstances be entitled to levy Additional Charges in the manner set out in clause 5.5 below.

5.5 Without prejudice to clause 5.4 above the Company shall be entitled to levy reasonable additional charges in the manner set out in clause 5.6 below if the Services are provided in circumstances where any reasonably skilled and competent data processing operator would have judged the Customer's request to have been unnecessary.

5.6 Additional Charges shall be levied by the Company and shall be payable by the Customer (together with value added tax thereon) immediately.

5.7 The Company shall provide technical support for the period specified in the order form. Additional support after the period specified may be offered to the customer at the company's discretion.

6. Property and confidentiality in the licensed program materials

6.1 The Licensed Program Materials contain confidential information of the Company and all copyright trade marks and other intellectual property rights in the Licensed Program Materials are the exclusive property of the Company unless otherwise stated.

6.2 The Customer shall not:

6.2.1 Save as provided elsewhere in this agreement make back-up copies of the Licensed Program Materials;

6.2.2 Reverse compile, copy or adapt the whole or any part of the Licensed Program Materials for the purposes of correcting errors in the Licensed Program Materials;

6.2.3 Save solely for the purposes expressly permitted by and in accordance with s.296A(1) CDPA or s.50B(2) CDPA copy adapt or reverse compile the whole or any part of the Licensed Program Materials;

6.2.4 Assign transfer sell lease rent charge or otherwise deal in or encumber the Licensed Program Materials or use the Licensed Program Materials on behalf of any third party or make available the same to any third party; or

6.2.5 Remove or alter any copyright or other proprietary notice on any of the Licensed Program Materials.

6.3 The Customer shall:

6.3.1 Keep confidential the Licensed Program Materials and limit access to the same to those of its employees, agents and sub-contractors who either have a need to know or who are engaged in the Use of the Licensed Programs (including where appropriate the Program Documentation);

6.3.2 Reproduce on any copy (whether in machine readable or human readable form) of the Licensed Program Materials the Company's copyright and trade mark notices;

- 6.3.3** Maintain an up-to-date written record of the number of copies of the Licensed Program Materials and their location and upon request forthwith produce such record to the Company; and
- 6.3.4** Notify the Company immediately if the Customer becomes aware of any unauthorised use of the whole or any part of the Licensed Program Materials by any third party; and
- 6.3.5** Without prejudice to the foregoing take all such other steps as shall from time to time be necessary to protect the confidential information and intellectual property rights of the Company in the Licensed Program Materials.
- 6.4** The Customer shall inform all relevant employees agents and sub-contractors that the Licensed Program Materials constitute confidential information of the Company and that all intellectual property rights therein are the property of the Company and the Customer shall take all such steps as shall be necessary to ensure compliance by its employees agents and sub-contractors with the provisions of this clause 7.

7. Warranty

- 7.1** Subject to the exceptions set out in clause **7.3** below and the limitations upon its liability in clause **8** below the Company warrants that:
- 7.1.1** Its title to and property in the Licensed Program Materials is free and unencumbered and that it has the right power and authority to license the same upon the terms and conditions of this agreement;
- 7.1.2** The media upon which the Licensed Program Materials are stored will be free from defects in materials design and workmanship;
- 7.1.3** The Licensed Programs will conform to the Program Specification;
- 7.1.4** It will perform the Services with reasonable care and skill; and
- 7.1.5** The Licensed Program Materials conform to Year 2000 Conformity unless otherwise stated.
- 7.2** The Customer shall give notice to the Company as soon as it is reasonably able upon becoming aware of a breach of warranty.
- 7.3** The Company shall have no liability to remedy a breach of warranty where such breach arises as a result of any of the circumstances described in clause **5.3** above.
- 7.4** Without prejudice to the foregoing the Company does not warrant that the use of the Licensed Programs will meet the Customer's data processing requirements or that the operation of the Licensed Programs (including where in machine-readable form the Program Documentation) will be uninterrupted or error free.
- 7.5** The Company gives no warranty in respect of the Database and the Company excludes all liability in respect thereof.

7.6 Subject to the foregoing all conditions warranties terms and undertakings express or implied statutory or otherwise in respect of the Licensed Program Materials and the provision of the Services are hereby excluded.

8. Limitation of liability

8.1 The following provisions set out the Company's entire liability (including any liability for the acts and omissions of its employees agents and sub-contractors) to the Customer in respect of:

8.1.1 Any breach of its contractual obligations arising under this agreement;

8.1.2 Any representation statement or tortuous act or omission including negligence arising under or in connection with this agreement; and

8.1.3 The Database.

8.2 Any act or omission on the part of the Company or its employees agents or sub-contractors falling within clause **8.1** above shall for the purposes of this clause 9 be known as an "Event of Default".

8.3 The Company's liability to the Customer for death or injury resulting from its own or that of its employees' agents' or sub-contractors' negligence shall not be limited.

8.4 Subject to the limits set out in clause **8.5** below the Company shall accept liability to the Customer in respect of damage to the tangible property of the Customer resulting from the negligence of the Company or its employees agents or sub-contractors.

8.5 Subject to the provisions of clause **8.3** above the Company's entire liability in respect of any Event of Default shall be limited to damages of an amount equal to the Licence Fee paid.

8.6 Subject to clause **8.3** above the Company shall not be liable to the Customer in respect of any Event of Default for loss of profits goodwill or any type of special indirect or consequential loss (including loss or damage suffered by the Customer as a result of an action brought by a third party) even if such loss was reasonably foreseeable or the Company had been advised of the possibility of the Customer incurring the same.

8.7 Licensed Program Materials provided for the customer are extensively engineered and as such are extremely complex. Whilst every effort is made to provide Licensed Program Materials error free no guarantees are provided that unforeseen errors will not be picked up. The company guarantee to fix software errors as and when reported providing full details of the nature of the error and the circumstances in which it was created are given in writing. The Customer hereby agrees to afford the Company not less than 90 days (following notification thereof by the Customer) in which to remedy any Event of Default hereunder. It is the customer's responsibility to check all data for accuracy prior to manufacture. Unforeseen errors are not accepted as reason not to pay the balance on the scheduled last day of installation. The customer is advised that all software should be covered by Insurance to protect against loss or theft of any kind. If the software has been purchased for the Customer by a third party then it will be supplied in accordance with the Company's terms. The Company reserve the right to cancel an order and retain, or return any deposits, or part thereof paid at their discretion.

8.8 If a number of Events of Default give rise substantially to the same loss then they shall be regarded as giving rise to only one claim under this agreement.

8.9 Except in the case of an Event of Default arising under clause **8.3** above the Company shall have no liability to the Customer in respect of any Event of Default unless the Customer shall have served notice of the same upon the Company within 3 days of the date it became aware of the circumstances giving rise to the Event of Default, or the date when it ought reasonably to have become so aware.

8.10 Nothing in this clause shall confer any right or remedy upon the Customer to which it would not otherwise be legally entitled.

9. Risk in the Licensed Program Materials

9.1 Risk in the Licensed Program Materials and any Hardware will pass to the Customer upon the Actual Delivery Date. Title to the Licensed Program Materials and any Hardware remains vested in the Company until payment by the Customer in full of the Licence Fee and all other sums due to the Company hereunder. For the avoidance of doubt title in and to all intellectual property rights subsisting in the Licensed Program Materials remains vested in the Company.

10. Confidentiality

10.1 Each of the parties hereto undertakes to the other to keep confidential all information (written or oral) concerning the business and affairs of the other that it shall have obtained or received as a result of the discussions leading up to or the entering into of this agreement save that which is:

10.1.1 Trivial or obvious;

10.1.2 Already in its possession other than as a result of a breach of this clause; or

10.1.3 In the public domain other than as a result of a breach of this clause.

10.2 Each of the parties undertakes to the other to take all such steps as shall from time to time be necessary to ensure compliance with the provisions of clause **11.1** above by its employees agents and sub-contractors.

11. Training

11.1 The Company shall provide to the Customer commencing upon the Acceptance date the training services to be included in the Licence Fee and set out in the Order Form and/or Proposal/Quotation documents.

11.2 Any additional training services requested by the Customer shall be provided by the Company for Additional Charges levied on the basis set out in clause **5.6** above.

12. Duration of agreement

12.1 This agreement shall continue until terminated in accordance with the provisions of clause **13** below.

13. Termination

13.1 This agreement may be terminated:

13.1.1 Forthwith by the Company, if the Customer fails to make payment on the due date therefore;

13.1.2 Forthwith by either party if the other commits any material breach of any term of this agreement and which (in the case of a breach capable of being remedied) shall not have been remedied within 90 days of a written request to remedy the same;

13.1.3 Forthwith by either party if the other shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or if the other shall be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or if a trustee receiver administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction) or any analogous procedures under English or other law.

13.2 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 or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

13.3 Immediately upon termination of this agreement (howsoever and by whomsoever occasioned) the Customer shall at the Licensor's sole option return all copies of the Licensed Program Materials and the Hardware in its possession or control or destroy the same and a duly authorised officer of the Customer shall certify in writing to the Company that the Customer has complied with its obligation as aforesaid.

14. Force majeure

14.1 Neither party hereto shall be liable for any breach of its obligations hereunder resulting from causes beyond its reasonable control including but not limited to fires strikes (of its own or other employees) insurrection or riots, acts of terrorism, embargoes, container shortages, wrecks or delays in transportation, inability to obtain supplies and raw materials requirements, or regulations of any civil or military authority (an 'Event of Force Majeure').

14.2 Each of the parties hereto agrees to give notice forthwith to the other upon becoming aware of an Event of Force Majeure such notice to contain details of the circumstances giving rise to the Event of Force Majeure.

14.3 If a default due to an Event of Force Majeure shall continue for more than [4] weeks then the party not in default shall be entitled to terminate this agreement. Neither party shall have any liability to the other in respect of the termination of this agreement as a result of an Event of Force Majeure.

15. Waiver

15.1 The waiver by either party of a breach or default of any of the provisions of this agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

16. Notices

16.1 Any notice request instruction or other document to be given hereunder shall be delivered or sent by first class post or by telex or facsimile transmission (such telex or facsimile transmission notice to be confirmed by letter posted within 12 hours) to the address or to the facsimile number of the other party set out in this agreement (or such other address or numbers as may have been notified) and any such notice or other document shall be deemed to have been served (if delivered) at the time of delivery (if sent by post) upon the expiration of 48 hours after posting and (if sent by telex or facsimile transmission) upon the expiration of 12 hours after dispatch.

Notices to the Company: The address given on the Order Form and/or Proposal/Quotation documents.

Notices to the Purchaser: The address given on the Order Form and/or Proposal/Quotation documents.

17. Invalidity and severability

17.1 If any provision of this agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of this agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.

18. Entire agreement

18.1 The Company shall not be liable to the Customer for loss arising from or in connection with any representations agreements statements or undertakings made prior to the date of execution of this agreement other than those representations agreements statements or undertakings confirmed by a duly authorised representative of the Company in writing or expressly incorporated or referred to in this agreement.

18.2 The Customer accepts that the Licensed Program Materials were not designed and produced to its individual requirements and that it was responsible for their selection.

19. Successors

19.1 This agreement shall be binding upon and enure for the benefit of the successors in title of the parties hereto.

20. Assignment and sub-licensing

20.1 The Customer shall not be entitled to assign or otherwise transfer this agreement nor any of its rights or obligations hereunder nor sub-license the use (in whole or in part) of the Licensed Program Materials without the prior written consent of the Company.

21. VAT

21.1 Save insofar as otherwise expressly provided all amounts stated in this Agreement are expressed exclusive of value added tax and any value added tax arising in respect of any supply made hereunder shall on the issue of a valid tax invoice in respect of the same be paid by the Customer.

22. Headings

22.1 Headings to clauses in this agreement are for the purpose of information and identification only and shall not be construed as forming part of this agreement.

23. Law

23.1 This agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties hereby submit to the non-exclusive jurisdiction of the English courts.