

KESWICK COMPUTER SERVICES LTD

TERMS AND CONDITIONS OF SUPPLY

1. DEFINITIONS

- 1.1 "Customer" means the party identified as the Customer in this Agreement to whom Keswick Computer Services Ltd may agree to supply Products in accordance with these terms and conditions.
- 1.2 "Keswick Computer Services Ltd" means Keswick Computer Services Ltd of 5 Packhorse Court, Keswick, Cumbria, CA12 5JB or any subsidiary or associated company.
- 1.3 "Products" means goods including but not limited to computer hardware and software items to be provided by Keswick Computer Services Ltd to the customer in accordance with these terms & conditions.
- 1.4 "Third Party Software" means all software owned by or licensed to the Customer from a third party owner (whether or not supplied by Keswick Computer Services Ltd) and which comprises part of the Products.

2. ORDER ACCEPTANCE

- 2.1 All orders placed with Keswick Computer Services Ltd by the customer for Products shall constitute an offer to Keswick Computer Services Ltd, under these terms and conditions, subject to availability of the products and to the acceptance of the order by Keswick Computer Services Ltd' authorised representative.
- 2.2 All orders are accepted and Products supplied subject to these express terms and conditions only. No amendment of these terms and conditions will be valid unless confirmed in writing on or after the date hereof by Keswick Computer Services Ltd' authorised representative.
- 2.3 It is agreed that these terms and conditions prevail over the Customer's terms and conditions of purchase unless these latter terms and conditions are amended by Keswick Computer Services Ltd in writing and signed by Keswick Computer Services Ltd.

3. INDEPENDENT CONTRACTOR

The relationship between the Supplier and Customer is that of independent contractor. Neither party is the agent of the other and neither party has any authority to make any contract or make any obligation expressly or implied in the name of the other party without that party's prior written consent for express purposes connected with the performance of this agreement.

4. DISPATCH

- 4.1 Any time quoted for dispatch is to be treated as an estimate only, but dispatch may be postponed because of conditions beyond Keswick Computer Services Ltd' reasonable control, and in no event shall Keswick Computer Services Ltd be liable for any damages or penalty for delay in dispatch or delivery.
- 4.2 Risk shall pass to the customer at the time the Products are dispatched by or on behalf of Keswick Computer Services Ltd. Keswick Computer Services Ltd accepts no liability for loss or damage caused by the carrier.
- 4.3 If Products have not been received, the Customer must notify Keswick Computer Services Ltd within 7 days of the date of invoice. If proof of delivery is required, this must be requested within 14 days of the invoice.

5. CANCELLATION AND RESCHEDULING

Subject to clause 8.2, any request by the Customer for cancellation of any order or for rescheduling of deliveries will only be considered by Keswick Computer Services Ltd if made at least 12 hours before dispatch of the Products, and shall be subject to acceptance by Keswick Computer Services Ltd at Keswick Computer Services Ltd' sole discretion, and subject to a reasonable administration charge therefore by Keswick Computer Services Ltd. The Customer hereby agrees to indemnify Keswick Computer Services Ltd against all loss, costs (including cost of labour and materials used and overheads incurred) damages, charges and expenses arising out of the order and its cancellation or rescheduling.

6. PRICES

- 6.1 Catalogue, price lists and other advertising literature or materials as used by Keswick Computer Services Ltd are intended only as an indication as to price and range of goods offered and no prices, descriptions or other particulars contained therein shall be binding on Keswick Computer Services Ltd.
- 6.2 All prices are given by Keswick Computer Services Ltd at the time of the order on an ex-works basis and the Customer is liable to pay for transport, packing and insurance.
- 6.3 All quoted or listed prices are based on the cost to Keswick Computer Services Ltd of supplying the Products to the Customer. If before delivery of the Products there occurs any increase in any way of such costs in respect of Products which have not yet been delivered, the price payable may be subject to amendment without notice at Keswick Computer Services Ltd' discretion.
- 6.4 All prices are exclusive of Value Added Tax and any similar taxes. All such taxes are payable by the Customer and will be applied in accordance with U.K. legislation in force at the tax point date.

7. PAYMENT TERMS

- 7.1 Invoices will be raised and dated by Keswick Computer Services Ltd on the date of dispatch of the Products. Unless otherwise specifically negotiated and agreed, invoices will be payable by the Customer 7 days from the date of the invoice. Payments which are not received when payable will be considered overdue and remain payable by the Customer together with interest for late payment from the date payable at the rate of 4% per annum above the base rate for the time being of the Lloyds TSB. Such interest shall accrue on a daily basis and be payable on demand after as well as before judgment. Where specially negotiated payment terms are agreed, monthly payments not received when payable will also be considered overdue and treated in the same way.
- 7.2 When all prices, taxes and charges due in respect of the Products and any products supplied previously to the Customer have been paid for in full, title to hardware Products only shall pass to the customer.
- 7.3 Notwithstanding dispatch and the passing of risk in the Products to the customer pursuant to Clause 4, or any other provision of these conditions, the property in the hardware Products shall not pass to the Customer until Keswick Computer Services Ltd has received in cash or cleared funds payment of the price of the Products and all of the products agreed to be sold by Keswick Computer Services Ltd to the Customer for which payment is then due.
- 7.4 Until such times as the property in the Products passes to the Customer, the Customer shall hold the Products as Keswick Computer Services Ltd' fiduciary agent and bailee, and shall keep the Products properly stored, protected and insured and identified as Keswick Computer Services Ltd' property. Until that time the Customer shall be entitled to resell or use the Products in the ordinary course of its business, but shall account to Keswick Computer Services Ltd for the proceeds of sale or otherwise of the Products, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the customer and third parties and, in the case of tangible proceeds stored, protected and insured.
- 7.5 Until such times as the property in the Products passes to the Customer, (and provided the Products are still in existence and have not been resold) Keswick Computer Services Ltd shall be entitled at any time to require the Customer to deliver up the Products to Keswick Computer Services Ltd and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Products are stored and repossess the Products.
- 7.6 The Customer's power of sale or right to use such Products shall immediately cease if an Administrative Receiver is appointed over all or any part of its assets or if it is adjudicated bankrupt or enters into liquidation whether compulsory or voluntary, or if the Customer makes an arrangement with its creditors, or generally becomes unable to pay its debts within the meaning of the Insolvency Act 1986.
- 7.7 On termination of the Customer's power of sale or right to use the Products the Customer will immediately hold the Products to the order of Keswick Computer Services Ltd.
- 7.8 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Products which remain the property of Keswick Computer Services Ltd, but if the Customer does so, all monies owing by the Customer to Keswick Computer Services Ltd shall (without prejudice to any other right or remedy of the seller) forthwith become due and payable.
- 7.9 Keswick Computer Services Ltd reserves the right to cease supplies of Products to the Customer at any time. On such cessation of supplies, Keswick Computer Services Ltd reserves the right to withdraw any credit facility such that the whole of the Customer's account becomes due for payment forthwith.

8. SPECIFICATION OF PRODUCTS

- 8.1 Keswick Computer Services Ltd will not be liable in respect of any loss or damage caused by or resulting from any variation for whatsoever reason in the manufacturer's specifications or technical data and will not be responsible for any loss or damage resulting from curtailment or cessation of supply following such variation. Keswick Computer Services Ltd will use reasonable endeavour to advise the Customer of any such impending variation as soon as it receives any notice thereof from the manufacturer.
- 8.2 Unless otherwise agreed, the Products are supplied in accordance with the manufacturer's standard specification. As these may be improved, substituted or modified, Keswick Computer Services Ltd reserves

the right to increase its quoted or listed price, or to charge accordingly in respect of any orders accepted for Products of non-standard specifications and in no circumstances will it consider cancellation of such orders or the return of the Products.

9. PROPRIETARY RIGHTS IN SOFTWARE PRODUCTS

- 9.1 The Customer hereby acknowledges that any proprietary rights in any Third Party Software supplied hereunder including but not limited to any title or ownership rights, patent rights, copyrights and trade secret rights, shall at all times and for all purposes vest and remain vested in the Third Party Software owner.
- 9.2 The Customer hereby acknowledges that it is its sole responsibility to comply with any terms and conditions of license attaching to Third Party Software supplied and delivered by Keswick Computer Services Ltd (including if so required the execution and return of a Third Party Software license). The Customer is hereby notified that failure to comply with such terms and conditions could result in the Customer being refused a software license or having the same revoked by the proprietary owner. The Customer further agrees to indemnify Keswick Computer Services Ltd in respect of any costs, charges, or expenses incurred by Keswick Computer Services Ltd at the suit of the Third Party Software owner as a result of any breach by the Customer of such conditions.
- 9.3 NO TITLE OR OWNERSHIP OF SOFTWARE PRODUCTS OR ANY THIRD PARTY SOFTWARE LICENSED TO THE CUSTOMER UNDER THIS AGREEMENT IS TRANSFERRED TO THE CUSTOMER UNDER ANY CIRCUMSTANCE.

10. RETURNS

- 10.1 Keswick Computer Services Ltd reserves the right to levy an administration charge in respect of the rotation of Products and returns.
- 10.2 Returns must be made subject to the following
 - (a) prior authority having been obtained from Keswick Computer Services Ltd which will be given at Keswick Computer Services Ltd' sole discretion;
 - (b) within 30 days of the date of the invoice;
 - (c) subject to stock rotation policy;
 - (d) the Products must be properly packed;
 - (e) the Products must be in saleable condition;
 - (f) the Products must be accompanied by a detailed packing list;
 - (g) the Product is covered by warranty (see section 11).
- 10.3 Keswick Computer Services Ltd reserves the right to reject any Products returned which do not comply with the conditions set out in clause 10.2.
- 10.4 If Keswick Computer Services Ltd nevertheless agrees to accept any Products returned in a non-saleable condition, Keswick Computer Services Ltd reserves the right to charge the cost to the Customer of bringing the Products to a saleable condition.

11. WARRANTY

- 11.1 Keswick Computer Services Ltd warrants that it has good title to or license to supply all Products to the Customer.
- 11.2 If any part of the hardware Products should prove defective in materials or workmanship under normal operations or service, such Products will be repaired or replaced only in accordance with any warranty cover and terms provided by the manufacturer of the Products PROVIDED THAT no unauthorised modifications to the Product or to the system of which the Product forms part have taken place. Keswick Computer Services Ltd is not responsible for the cost of labour or other expenses incurred in repairing or replacing defective or nonconforming parts.
- 11.3 All software Products supplied hereunder are supplied 'as is' and the sole obligation of Keswick Computer Services Ltd in connection with the supply of software Products is to use all reasonable endeavour to obtain and supply a corrected version from the manufacturer concerned. In the event that any such software Product should fail to conform to its product description PROVIDED ALWAYS THAT the Customer notifies Keswick Computer Services Ltd of any such non-conformity within 90 days of the date of delivery of the applicable software Product.
- 11.4 If the Products are rejected by the Customer as not being in accordance with the Customer's order pursuant to clause 11.2 or 11.3, Keswick Computer Services Ltd will only accept the return of such Products provided that it receives written notification thereof giving detailed reasons for rejection. Keswick Computer Services Ltd will not consider any claim for compensation, indemnity or refund until liability, if any, has been established or agreed with the manufacturer and where applicable the insurance company. Under no circumstances shall the invoked invoiced Products be deducted or set off by the Customer until Keswick Computer Services Ltd has passed a corresponding credit note.

12. INDEMNITIES AND LIMITS OF LIABILITY

- 12.1 Keswick Computer Services Ltd disclaims and excludes all liability to the Customer in connection with these terms and conditions including the customers use of the Products and in no event shall Keswick Computer Services Ltd be liable to the Customer for special, indirect or consequential damage including but not limited to loss of profits or arising from loss of data or in connection with the use of Products. All terms of any nature, express or implied, statutory or otherwise, as to correspondence with any particular description or sample, fitness for purpose or merchantability, are hereby excluded.
- 12.2 The Customer shall indemnify and defend Keswick Computer Services Ltd and its employees in respect of any claims by third parties which are occasioned by or arise from any Keswick Computer Services Ltd performance or non-performance pursuant to the instructions of the Customer or its authorised representative.

13. TERMINATION FOR CAUSE

- This agreement may be terminated forthwith by notice in writing:
- 13.1 By Keswick Computer Services Ltd if the Customer fails to pay any sums due hereunder by the due date notwithstanding the provisions for late payment in clause 7.1.
 - 13.2 If either party fails to perform any of its obligations under this agreement and such failure continues for a period of 14 days after written notice thereof, by the other party;
 - 13.3 If either party is involved in any legal proceedings concerning its solvency, or ceases trading, or commits an act of bankruptcy or is adjudicated bankrupt or enters into liquidation whether compulsory or voluntary, other than for the purposes of an amalgamation or reconstruction, or makes an arrangement with its creditors or petitions for an administration order or has a receiver or manager appointed over all or any part of its assets or generally becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, then without prejudice to any other rights or remedies available to it, the other party shall have the right to terminate this agreement forthwith.
 - 13.4 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.

14. CONTRACT

- 14.1 The headings in this Agreement are for ease of reference only and shall not affect its interpretation or construction.
 - 14.2 No forbearance, delay, or indulgence by either party in enforcing its respective rights shall prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms shall be deemed to be a waiver of any other right or any later breach.
 - 14.3 The Customer agrees not to assign any of its rights herein without the prior written consent of Keswick Computer Services Ltd.
 - 14.4 In the event of any of these terms and conditions or any part of any of them being judged illegal or unenforceable for any reason, the continuation in full force and effect of the remainder of them shall not be prejudiced.
 - 14.5 Neither party shall be liable to the other for any delay in or failure to perform its obligations hereunder (other than a payment of money) where such delay or failure results from force majeure, act of God, fire, explosion, accident, industrial dispute or any other cause beyond its reasonable control.
 - 14.6 Any documents or notices given hereunder by either party to the other must be in writing and may be delivered personally or by recorded delivery or registered post and in the case of post will be deemed to have been given 2 working days after the date of posting. Documents or notices shall be delivered or sent to the addresses of the parties on the first page of this agreement or to any other address notified in the normal course of trading in writing by either party to the other for the purpose of receiving documents or notices after the date of this agreement.
- These terms and conditions shall be governed and construed in accordance with English law.