

Altwood – Server Sales and Conditions:

Altwood IT Services -Terms and Conditions of Sale

1 Application

- 1.1 These terms apply to all sales of goods and services by Altwood IT Services (“the Seller”) to any purchaser (“the Buyer”) and shall prevail over any terms referred to in the Buyer’s order. For the purposes of these terms a “consumer contract” is defined as a contract for the supply of goods or services to a natural person who in making the contract to which these terms apply is acting for a purpose which is outside their business.

2 Quotations and Alterations

- 2.1 A quotation by the Seller does not constitute an offer and the Seller reserves the right to withdraw or revise a quotation at any time prior to the Seller’s acceptance of the Buyer’s order.
- 2.2 No variations or amendments to any order are binding unless confirmed by the Buyer and accepted by the Seller.

3 Cancellation

Contracts accepted by the Seller cannot be cancelled by the Buyer except on terms that will fully compensate the Seller for any actual or anticipated expenses and loss of profits. A minimum cancellation charge of 25% of order value will be applied to any order cancellation once the order has been accepted by the Seller.

Where the Buyer cancels with less than 48 hours notice of the Seller’s engineering or technical staff being onsite for installation or configuration then a charge will be payable to the Seller of 50% of the normal selling price of the service so cancelled as compensation for the loss suffered by the Seller.

4 Prices

- 4.1 The Seller 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 costs including (without limitation) costs of any goods, materials, carriage, labour or overheads, the imposition of any tax duty or other levy and any variation in currency exchange rates. However, in the case of a consumer contract (as defined in clause 1), the Buyer shall have the right to cancel the contract within 48 hours of being notified of any such discount, withdrawal or price increase if the resultant change in prices is more than 10% more than the price originally agreed.
- 4.2 Unless otherwise specified VAT and any other tax or duties payable by the Buyer shall be added to the price when applicable, e.g. when hardware is supplied from the UK then VAT and duty will be payable.

5 Terms of Payment

- 5.1 The Buyer shall pay for hardware, software and other tangible equipment within 14 days of each delivery of such goods to the Buyer or to the data/hosting centre. This obligation shall apply even if associated services have not been completed. The Buyer shall pay for any training services prior to commencement (if applicable). Other services shall be paid for within 14 days of completion. Payment of invoices shall unless otherwise agreed in writing be made in full without any deduction or set-off.
- 5.2 Should the Buyer request that delivery be postponed notwithstanding that the goods are available for delivery in accordance with the contract the Seller shall be entitled to invoice the Buyer for such goods and payment shall fall due within 14 days of such invoice.
- 5.3 Any extension of credit allowed to the Buyer may be changed or withdrawn at any time.

- 5.4 Interest shall be payable on overdue accounts at the rate of 3% over UK Bank base rate to run from the due date for payment until receipt by the Seller of the full amount whether or not after judgement.
- 5.5 If in the opinion of the Seller the credit-worthiness of the Buyer shall have deteriorated prior to delivery the Seller may require full or partial payment of the price prior to delivery or the provision of security for payment by the Buyer in a form acceptable to the Seller.

6 Delivery

- 6.1 Delivery dates mentioned in any quotation acknowledgement of order or elsewhere are approximate only and not of any contractual effect and the Seller shall not be under any liability to the Buyer in respect of any failure to deliver on any particular date or dates.
- 6.2 Delivery shall be at the Seller's premises unless otherwise stipulated or agreed by the Seller. The Seller will charge for delivery other than at its premises at its standard delivery rates unless allowed for within the quotation. The seller's premises' includes any data centre facility where hardware may ultimately be housed and operated.
- 6.3 If the Buyer refuses or fails to take delivery of goods tendered in accordance with the contract or fails to take any action necessary on its part for delivery and/or shipment of the goods the Seller shall be entitled to terminate the contract with immediate effect, to dispose of the goods as the Seller may determine, and to recover from the Buyer any loss and additional costs incurred as a result of such refusal or failure.
- 6.4 Unless otherwise expressly agreed the Seller may make delivery in one or more instalments each instalment being treated as a separate contract.
- 6.5 Risk shall pass on delivery to the Buyer.

7 Software

- 7.1 All software supplied by the Seller shall be subject to the Terms and Conditions of the author's current standard software licence agreement. The Seller shall not be responsible in any way for any software or applications or for the Buyer's use thereof.

8 Additional Items

- 8.1 Where the requirements for accessories and consumables including cables have not been identified and have been excluded from the Buyer's purchase order the Seller reserves the right to charge extra for these items. The exclusion of such items from the Buyer's offer to purchase shall not invalidate such offer in any way.
- 8.2 Should there be any installation or service requirements which have not been included in the Buyer's offer to purchase (including but without limitation installation of additional cabling points and variations to the implementation schedule or further software/applications) subject to clause 2 these shall be charged to the Buyer at the Seller's prevailing rates. The Buyer shall at its own expense provide all reasonable assistance to the Seller for the installation and operation of the equipment.

9 Title

- 9.1 All goods are supplied to the Buyer by the Seller on the following terms:-
- 9.1.1 The goods shall remain the sole and absolute property of the Seller as legal and equitable owner until such time as the Buyer shall have paid to the Seller the agreed price in full.
- 9.1.2 Until such payment the Buyer shall be in possession of the goods solely as bailee for the Seller and in a fiduciary capacity and shall store the goods in such a way as to enable them to be identified as the property of the Seller.
- 9.1.3 The Seller reserves the immediate right of re-possession of any goods to which it has retained title and then to re-sell them. For this purpose the Buyer grants an irrevocable right and licence to the Seller to enter its premises during normal business hours. This right shall continue notwithstanding the termination of the contract for any reason and is without prejudice to any accrued rights of the Seller.

10 Variations

- 10.1 The Seller shall be deemed to have fulfilled its contractual obligations in respect of any delivery though the quantity may be up to 10% more or less than the quantity specified in the contract in such event the Buyer shall pay for the actual quantity delivered.

11 Warranty

- 11.1 The Seller warrants that goods delivered under this contract are as described and that the Seller has the right to sell same. The Seller's warranty is effective from the date the goods have been accepted and is limited to twelve months thereafter or such other period as may be notified by the Seller to the Buyer in writing (the "warranty period"). If during the warranty period, goods prove faulty by reason of inherently defective material or inferior workmanship and the faulty goods are returned to the Seller promptly upon discovery of such fault and properly packaged so as not to sustain any damage in transit, the Seller shall at its option, without charge, repair or replace the goods shown to the satisfaction of the Seller to be defective in material or workmanship as aforesaid. The warranty shall not operate where the goods have been subject to use beyond their normal performance specifications or in any other way misused.
- 11.2 Notwithstanding the foregoing, the Seller's liability in respect of goods subject to a separate guarantee by the manufacturer of same goods will be limited to the manufacturer's own warranty terms and conditions. Subject to the provisions above, all above or implied warranties or conditions, statutory or otherwise, as to quality or fitness for any purpose of the goods is hereby expressly excluded and The Seller shall not (except as set out above) be under any liability whatsoever in respect of goods delivered or for any loss to the property of any person resulting from such defects from any cause whatsoever.

12 Third Party Rights

- 12.1 The Buyer shall use its best endeavours to assist the Seller in any action for costs to be incurred by or made against the Seller as a direct or indirect result of the carrying out of any work required to be done on or to the goods in accordance with the requirements or specifications of the Buyer involving any infringement or alleged infringement of any rights of any third party.

13 Specifications and Information

- 13.1 Unless expressly agreed in writing by the Seller all drawings, designs, specifications and particulars of weights and dimensions submitted by the Seller are approximate only and the Seller shall have no liability in respect of any deviation from them. The Seller accepts no responsibility for any errors, omissions or other defects in any drawings, designs or specifications not prepared by the Seller. The Seller shall be indemnified by the Buyer against any liabilities incurred by the Seller arising from them. In relation to consumer contracts however, this is notwithstanding the right of the consumer to object to any material deviation from the design specifications and particulars of weight and dimensions of any products sold under these terms.
- 13.2 All drawings, designs, specifications and information submitted by the Seller are confidential and shall not be disclosed to any third party without the Seller's written consent.
- 13.3 Where the Seller provides the Buyer with any information about the compatibility of hardware with software such information reflects the genuine belief of the Seller. However, as in many cases the hardware may not have been tested with the software before, no warranty is given by the Seller to the Buyer about any compatibility of hardware with software.

14 Liability

- 14.1 The Seller shall not be liable to the Buyer:-
- 14.1.1 for shortages in quantity delivered unless the Buyer notifies the Seller of any claim for short delivery within 14 days of receipt of the goods;

- 14.1.2 for damage to or loss of the goods in transit (where the goods are carried by the Seller's own transport or by a carrier on behalf of the Seller) unless the Buyer shall notify the Seller of any such claim within 14 days of receipt of the goods or the scheduled date of delivery whichever shall be the earlier;
- 14.1.3 for defects in the goods caused by fair wear and tear, abnormal conditions of storage or use or any act, neglect or default of the Buyer or of any third party;
- 14.1.4 for other defects in the goods unless notified to the Seller within 1 month of receipt of the goods by the Buyer or where the defect would not be apparent on reasonable inspection within 6 months of delivery;
- 14.1.5 any breakdown of or fault in the Equipment, unless and to the extent that such breakdown or fault is caused by negligence or wilful misconduct of the Seller, its employees, agents or sub-contractors;
- 14.1.6 any defect or error in the software or any operating manuals.
- 14.2.1 Where liability is accepted by the Seller under paragraph 14.1 the Seller's only obligation shall be at its option to make good any shortage or non-delivery and/or as appropriate to replace or repair any goods found to be damaged or defective and/or to refund the cost of such goods to the Buyer.
- 14.2.2 The Seller's aggregate liability to the Buyer whether for negligence, breach of contract, misrepresentation or otherwise shall in no circumstances exceed the cost of the defective, damaged or undelivered goods which give rise to such liability as determined by net price invoiced to the Buyer in respect of any occurrence or series of occurrences.
- 14.2.3 In no circumstances shall the Seller be liable to the Buyer for any loss of profits or contracts or other indirect or consequential loss whether arising from negligence breach of contract or howsoever.
- 14.3 Subject to sub-clauses 14.1 and 14.2 above, (and so far as may be permissible under the United Kingdom Unfair Contract Terms Act 1977 and any other relevant legislation, UK, EU or otherwise) all conditions warranties and representations expressed or implied by statute common law or otherwise in relation to the goods and/or services are excluded. The Seller shall be under no liability to the Buyer 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 Seller its employees or agents SAVE THAT the Seller shall accept liability for death or personal injury caused by the negligence of the Seller.
- 14.4 The Seller's prices are determined on the basis of the limits of liability set out in this clause. The Buyer may by written notice to the Seller, request the Seller to agree to a higher limit of liability provided insurance cover can be obtained by the Seller.

15 Sub-Contracting

- 15.1 The Seller reserves the right to sub-contract.

16 Leasing

- 16.1 In the event of the Buyer entering into a financial arrangement with a third party whereby it is intended that title shall pass to the third party, the Buyer shall, notwithstanding anything to the contrary, remain liable under the provisions of this Agreement including those provisions as to payment. The Seller agrees to supply the equipment to a third party if they shall discharge the full purchase price to the Seller.
- 16.2 If, for any reason, the Buyer's intention to finance the equipment is frustrated, all of these terms shall remain in full force as between the Buyer and the Seller.

17 Packaging

- 17.1 The Buyer shall meet the cost of any special packaging requested by the Buyer or any packaging rendered necessary by delivery by any means other than the Seller's normal means of delivery.

17.2 The Seller shall be entitled to invoice the Buyer for the cost of all pallets and other returnable packaging materials unless the same are returned to the Seller in good condition, carriage paid within 30 days of the date of delivery.

18 RMA Procedure

18.1 If the product is within the warranty period a Return to Manufacturer Authorisation ("RMA") number will be issued by the Seller on notification of a fault. No goods may be returned without such an RMA number being shown in the packaging and goods returned without a valid RMA number will be refused or returned.

19 Returns

19.1 Prior authorisation is required before any goods may be returned. A Returns number must be obtained and displayed on any packaging. Goods returned without such a returns number will be refused and returned.

20 Licenses and Consents

20.1 If any licence or consent of a government or other authority shall be required for the acquisition, carriage or use of the goods by the Buyer the Buyer shall obtain this at its own expense and if necessary produce evidence of this to the Seller upon request. Failure to do so shall not entitle the Buyer to withhold or delay payment of the price. Any additional expenses or charges incurred by the Seller resulting from such failure shall be for the Buyer's account.

21 Clerical Errors

21.1 Clerical errors are subject to correction by the Seller at any time.

22 Force Majeure

22.1 The Seller shall not be liable to the Buyer for any loss or damage which may be suffered by the Buyer as a direct or indirect result of the supply of goods or services by the Seller being prevented, hindered, delayed or rendered uneconomic by reason of circumstances or events beyond the Seller's control. Such circumstances would include but are not limited to acts of god, war, riot, strike, lock-out, trade dispute, labour disturbance, accident, break-down of plant or machinery, fire, flood, storm, difficulty or increased expense in obtaining workmen materials or transport or other circumstances affecting the supply of the goods or services or of raw materials from the Seller's normal source of supply or the manufacture of the goods by the Seller's normal means or the delivery of the goods by the Seller's normal means.

22.2 If due to such circumstances or events the Seller has insufficient stocks to meet all its commitments the Seller may apportion available stocks between its buyers at its sole discretion.

23 Insolvency and Default

23.1 If the Buyer enters into a deed of arrangement or commits an act of bankruptcy or compounds with his creditors or if a receiving order is made against him or if (being a company) an order is made or a resolution is passed for winding up of the Buyer (otherwise than for the purposes of amalgamation or reconstruction previously approved in writing by the Seller) or if a receiver or administrator is appointed of any of the Buyer's assets or undertaking or if circumstances arise which entitle the Court or a creditor to appoint a receiver or manager or administrator or which entitle the Court to make a winding-up order or if the Buyer takes or suffers any similar or analogous action in consequence of debt or commits any material breach of this or any other contract between the Seller and the Buyer the Seller may without prejudice to any of its other rights stop any goods in transit and/or suspend further deliveries

or services and/or determine the rights of the Buyer under Clause 9 and/or by notice in writing to the Buyer determine the contract.

24 Waiver

24.1 Failure by the Seller to enforce any rights under these terms shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement of them at any time later.

25 Notices

25.1 Any notice under these terms shall be deemed to have been duly given if sent by prepaid first class post or facsimile to the party concerned at its last known address. Notices sent by first class post shall be deemed to have been given seven days after despatch and notices sent by facsimile shall be deemed to have been given on the date of despatch.

26 Governing Law

26.1 The contract shall be governed by the Laws of England and the parties submit to the non-exclusive jurisdiction of the English courts.