

## **General Terms & Conditions**

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### **1.0 Definitions**

- 1.1 "MT" means MooreTech Ltd
- 1.2 "Client" means the Client (or any person acting on behalf of and with the ostensible authority of the Client) as described on any quotation, work authorisation, Letter of Engagement or other form as provided by MT to the Client.
- 1.3 "Hardware" means any and all computer and related hardware of any description purchased by the Client from MT.
- 1.4 "Letter of Engagement" means any Letter of Engagement entered into by the Client on MT's Letter of Engagement form.
- 1.5 "Price" means the price payable for the Services agreed between MT and the Client in accordance with Clause 4 of this contract.
- 1.6 "Proprietary Software" means any software which is provided as part of the Services by MT which is proprietary to it and identified by MT as Proprietary Software.
- 1.7 "Services" means all services (including any documentation and provision of Hardware) supplied by MT to the Client and includes any advice or recommendations and are as described in any Letter of Engagement and/or the invoices, quotation, estimate, work authorization or any other forms as provided by MT to the Client.
- 1.8 "Terms" means these Terms & Conditions.

### **2.0 Acceptance**

- 2.1 The Client shall be deemed to have accepted these Terms if it has:
- (a) signed a copy of them, or
  - (b) signed a Letter of Engagement with MT; or
  - (c) otherwise authorised MT to provide Services and/or Hardware, whether in writing (including by facsimile or email) or verbally, and MT has acted on those instructions.
- 2.2 Acceptance of these Terms under 2.1 means these Terms are solely binding on the Client to the exclusion of any other written or verbal document or agreement including, without limitation, and terms and conditions of the Client.

### **3.0 Services**

- 3.1 The Services and Hardware (if any) shall be as described in the Letter of Engagement or, if there is no Letter of Engagement, as itemised in any quotation or estimate given by MT.
- 3.2 These terms and conditions are to be read in conjunction with the Letter of Engagement (if there is one). If there is a conflict between any provision in any Letter of Engagement signed by the Client and these Terms, the provision in the Letter of Engagement shall prevail.
- 3.3 Hours of Service will only be provided between the hours of 8.30am to 5pm Monday to Friday, excluding public holidays. Service outside these hours will only be supplied if detailed either in a letter of Engagement or a Service Level Agreement.

#### **4. Price and payment**

- 4.1 The Price for provision of the Services shall be either:
- (a) MT's quoted price (subject to clause 4.2) which shall be binding upon MT provided that the Client has accepted MT's quotation in writing within fourteen (14) days of its date; or
  - (b) if no quote has been given, as invoiced by MT to the client in respect of Services supplied.
- 4.2 MT reserves the right to change the Price in the event of a variation to the Services and/or Hardware requested by the Client.
- 4.3 MT shall be entitled to invoice:
- (a) at the conclusion of the supply of the Services; or
  - (b) if the provision of the Services takes longer than one (1) month from commencement, monthly for the Services provided to date of invoice
- and payment is due seven (7) days from invoice or as otherwise agreed in writing with the Client.
- 4.4 Payment will be made by direct credit to MT's bank account, which is as detailed on invoices.
- 4.5 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

#### **5. Delivery of Services**

- 5.1 The Client shall meet all freight costs for delivery of Hardware & Software.
- 5.2 MT shall use its best endeavours to perform the Services and supply the Hardware & Software in accordance with any delivery schedule agreed in writing with the Client, and otherwise in a timely manner. The failure of MT to deliver shall not entitle either party to treat this contract as repudiated.
- 5.3 MT shall not be liable for any loss incurred by the Client due to failure by MT to deliver the Services, where such failure is due to circumstances beyond the control of MT.

#### **6 Ownership and Personal Property Securities Act**

- 6.1 Property and ownership in the Services, Hardware & Software will remain with MT until the Client has paid for them in full. Until payment has been received, the Client shall keep the Hardware & Software separate from other hardware & Software it may have, and clearly identify it is belonging to MT. The Client authorises MT or its agent to enter its premises to check that these requirements are being met.
- 6.2 Without prejudice to any other of MT's rights, the Client authorises MT or its agent to enter its premises to remove any Hardware or Software which is MT's property, and the Client agrees to indemnify MT against all costs and claims in respect of its exercise or rights under this clause. MT shall be entitled to do this even if the Client has installed Software not supplied by MT on the Hardware.
- 6.3 In order to protect MT's rights under 6.1 and 6.2, the Client agrees that MT may register a personal money security interest ("PMSI") in respect of the Hardware under the Personal Property Securities Act 1999 (PPSA), and the Client:
- (a) will cooperate in all respects concerning this registration; and
  - (b) specifically, will provide all details concerning the Client as are required by MT to enable it to register the PMSI within the time limits for registration under the PPSA;
  - (c) waives its right under section 148 of the PPSA to receive a copy of the verification statement confirming registration of the PMSI.

- 6.4 The Client will not grant a PMSI or other security interest in the Hardware or Software to any other party, or which conflicts with MT's rights under 6.3.
- 6.5 Once payment in full has been made by the Client, MT shall at the request of the Client remove the PMSI from the PPSA register.
- 6.6 Receipt by MT of any form of payment shall not be deemed to be payment until that payment has been honoured, cleared or recognised in full.
- 6.7 Ownership of any software provided as part of the provision of the Services which is Proprietary Software remains with MT at all times and the Client is granted a non-exclusive licence to use the same, provided payment in full has been made to MT for the Services.

## **7. Errors and Omissions**

- 7.1 The Client shall within seven (7) days of delivery notify MT of any alleged errors, non-compliance, omissions or failures of the Services to comply with the description or quote "defective Services"). The Client shall afford MT an opportunity to inspect the Services within a reasonable time following delivery if the Client believes the Services are defective in any way.
- 7.2 For defective Services, which MT has agreed in writing that the Client is entitled to reject, MT's liability is limited either to (MT's discretion) replacing the Services or rectifying the Services provided that the Client has complied with the provisions of clause 7.1.
- 7.3 Failure by the Client to notify MT of any defective services as required by 7.1 shall be deemed acceptance by the Client that the Services are acceptable.

## **8. Consumer Guarantees Act 1993**

If the Client is acquiring Services for the purpose of a trade or business, the Client acknowledges that the provisions of the Consumer guarantees Act do not apply to the supply of Services and/or Hardware & Software by MT to the Client, except to the extent only that MT is able to pass on warranties or guarantees on Hardware to the Client.

## **9.0 Default and Consequences of Default**

- 9.1 The Client shall pay interest on overdue invoices at a rate which is 5% over MT's banks' commercial overdraft rate in place from time to time.
- 9.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by MT.
- 9.3 If the Client defaults in payment of any invoices when due, the Client shall indemnify MT from and against all costs incurred by MT in pursuing the debt including legal costs and collection agency costs.
- 9.4 Without prejudice to any other remedies MT may have, if at any time the client is in breach of any obligation (including those relating to payment), MT may suspend or terminate the supply of Services and Hardware & Software to the Client and any of its other obligations under these Terms. MT will not be liable to the Client for any loss or damage the Client suffers because MT has exercised its rights under this clause.
- 9.5 If:
- (a) an account remains overdue for thirty (30) days or more; or
  - (b) in MT's opinion the client will be unable to meet its payments as they fall due:  
or
  - (c) the Client becomes insolvent, convenes a meeting with its creditors, or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client then without prejudice to its other remedies at law MT shall be entitled to:

- (i) cancel all or any part of the Services which remains unfulfilled and all amounts owing to MT shall, whether or not due for payment, become immediately payable; and
- (ii) enter the Client's premises as required to remove any Hardware & Proprietary Software.

## **10. Cancellation**

- 10.1 MT may cancel any contract to which these Terms apply or cancel delivery of Services at any time before the Services are delivered by giving written notice to the Client. On giving such notice MT shall repay to the Client any sums paid in respect of the Price. MT shall not be liable for any loss or damage whatever arising from such cancellation.
- 10.2 In the event that the Client cancels delivery of Services the Client shall be liable for any loss incurred by MT (including, but not limited to, any loss of profits) up to the time of cancellation.

## **11. Confidentiality**

MT agrees that both during and after the provision of Services any information disclosed to it by the Client to assist MT in providing the services shall be held in the strictest confidence, and except as provided for in these Terms or agreed by the Client in writing, shall not be reproduced nor disclosed to others in whole or in part without the express prior written permission of the Client or unless required to by law.

## **12. Liability Limitations**

- 12.1 MT will perform the Services with due care and diligence. However, MT will not be liable for any indirect or consequential damage or for any loss of business, property, profit or data, howsoever caused, reckless or dishonest action excepted, which may be suffered or incurred or which may arise directly or indirectly in respect of the Services or Hardware and whether such claim is made in contract, negligence or under any other legal claim.
- 12.2 MT's total liability for damages under this agreement, whether in contract, negligence or under any other legal claim shall be limited at MT's option to:
  - (a) supply and/or performance of the Services again; or;
  - (b) a refund of any payments made by the Client to MT in relation to the Services, such payments not to exceed \$300,000.
- 12.3 MT shall have no liability to the Client under 12.2 where the Client has done or omitted to do anything in respect of the Services or the Hardware & Software which:
  - (a) causes any manufacturer's warranty to be negated; or
  - (b) interferes with, or prevents, the Services from delivering their intended result to the Client, such as manipulation of the Hardware & Proprietary Software.
- 12.4 MT shall not be liable for any faults or defects in the Hardware, and the Client's sole remedy shall be against the manufacturer of such Hardware & Software, provided that MT will use its best endeavours to assist the Client in bringing a claim against any manufacturer for repair or replacement of the Hardware or Software.
- 12.5 The Client agrees to indemnify MT, its partners, directors, associates, employees, contractors and any other person that may be sought to be liable in excess of the limit of liability described in clause 12.1 in respect of any activity arising from or connected with these terms in respect of any claim of whatever kind, including negligence, that may be made by any person and any costs and expenses that may be incurred by MT.