



Stephens IT Solutions
General Conditions of Project IT Services

Created by: Compliance
Date 01/06/18
Version 1.0

Registered Office: Unit 2 Crayfields Business Park, New Mill Road, Orpington, BR5 3QA
Registered in England and Wales, Company Number: 08080361

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GENERAL CONDITIONS OF PROJECT IT SERVICES of STEPHENS IT SOLUTIONS LIMITED

APPLICATION

1. (1) In these Conditions, unless the context otherwise requires words denoting the singular include the plural and vice versa and:-
 - “Company” means Stephens IT Solutions Limited (registration no. 08080361).
 - “Conditions” means the terms and conditions of business of the Company set out herein.
 - “Contract” means the contract for the sale, installation and purchase of the Goods.
 - “Customer” means the person so described overleaf.
 - “Goods” means the goods, works and/or services described overleaf and includes any or any part of them.
 - “Premises” means the premises specified overleaf at which the Goods are to be installed.
 - “Property Damage” means damage to or loss of any material property.
 - “Product Liability” means legal liability for accidental loss of or damage to any material property and/or accidental death of or personal injury to any person (except for any Company employee where it arises out of and in the course of employment) caused by any defect in the Goods.
 - “supply of the Goods” includes the delivery and installation of the Goods.
 - “writing” includes facsimile transmission and email and “person” includes anybody corporate or unincorporated.
- (2) These Conditions, the terms specified overleaf and any special conditions agreed to in writing by the Company constitute the entire agreement for the sale and/or supply and installation of the Goods to the Customer and supersede any terms or representations referred to in the Company's sales literature or elsewhere. If any terms specified overleaf and/or any special conditions conflict with these Conditions, the former will prevail.

ORDERS AND SPECIFICATIONS

- 2.(1) Orders (including any acceptance of any estimate or quotation of the Company) will only bind the Company when it accepts them in writing or starts to fulfil them.
- (2) The Customer may, at any time prior to the Company accepting an order, amend or cancel an order by written notice to the Company. If the Customer amends or cancels an order, its liability to the Company shall be limited to payment to the Company of all costs reasonably incurred by the Company in fulfilling the order up until the date of deemed receipt of the amendment or cancellation, except that where the amendment or cancellation results from the Company's failure to comply with its obligations under these Conditions the Customer shall have no liability to the Company in respect of it.
- (3) Each order shall:
 - (a) Be given in writing or, if given orally, shall be confirmed in writing before noon on the day the order is placed for same day or next day deliveries, and for delivery in any other time periods a verbal order shall be confirmed in writing within 24 hours. All orders will be accompanied with a valid Customer Purchase Order; and
 - (b) Specify the type and quantity of the Goods ordered; and
 - (c) clearly and accurately identify the location(s) at the Premises at which the Goods are to be installed or delivered.
- (4) The Goods may be changed to conform with product development (but without materially adversely affecting their quality or performance) or any applicable safety or other statutory requirements.
- (5) Where the Customer's specifications requires a logo, branding or similar design to be incorporated into the Goods, the Customer must provide the Company with a suitable template for that specification at least 5 days prior to the estimated delivery date of the relevant Goods. The Customer will indemnify the Company against damages and costs awarded against the Company by a court of competent jurisdiction or agreed to be paid by it under a settlement negotiated by the Company in respect of any claim by a third party alleging that the Goods or any such logo, branding or similar design applied to them infringe any intellectual property rights of that third party.

PRICE

- 3.(1) Unless the Company otherwise agrees in writing, the price for the supply of the Goods will be that specified overleaf. All prices quoted, and quotations are valid for 30 days only. All prices and other charges will be subject to any applicable value added tax and other taxes or duties which will be payable at the same time as the price for the supply of the Goods.
- (2) Unless the Contract otherwise provides, the price for the supply of Goods includes their delivery to and installation at the Premises.
- (3) The Company reserves the right, by giving notice to the Customer at any time before installation, to increase the price for the supply of the Goods to reflect any increase in the cost to the Company of supplying the Goods which is due to any factor beyond the Company's reasonable control (such as any foreign exchange fluctuation, currency regulation, alteration of duties or material increase in the cost of manufacture), any change in installation date, quantities or specification requested by the Customer, any delay caused by any instructions given by the Customer or any failure or delay by the Customer in procuring the doing of anything which it has agreed to do under the Contract.

PAYMENT

- 4.(1) The Company may invoice the Customer for all sums payable under the Contract on or at any time after completion of the installation or, if the Customer wrongfully fails to agree with the Company a date or dates for the installation or fails to take delivery or permit the installation of the Goods on the date(s) so agreed or to give proper delivery or installation instructions, at any time after it has notified the Customer that they are ready for installation or it has tendered delivery of them. The time for payment will be of the essence.
- (2) Unless payment is to be made on completion of the installation, the Company's invoices will be payable within 30 days of their date of invoice. If the Company has serious doubts about the Customer's ability to pay any sum under the Contract on the due date the Customer will within 7 days of written notice from the Company pay the balance of all sums payable or becoming payable under the Contract or provide security for such payment to the Company's satisfaction pending which the Company may suspend the performance of all or any of its obligations under the Contract.
- (3) If the Customer fails to make any payment on the due date, the Company may terminate the Contract or suspend the supply of the Goods, appropriate any payment by the Customer to such of the supply of the Goods as the Company decides and/or charge the Customer interest on the amount for the time being unpaid at 5% above the base rate (or if it is replaced, its successor) from time to time of Barclays Bank Plc until payment in full is made. Such interest will accrue daily and be payable both before and after judgment.
- (4) All sums payable by the Customer must be paid in sterling without any deduction and regardless of any set-off, counterclaim or other claim or right.

INSTALLATION / PROJECT SERVICES

5. (1) The Company will use its reasonable endeavours to supply the Goods / Services by any estimated installation or completion date and time, but the time and date for delivery, installation or completion will not be of the essence of the Contract. The Company shall not be liable for the consequences (whether direct or indirect) of any failure or delay in the supply of the Goods or Services nor shall the Customer be entitled to terminate the Contract as a result of such failure or delay.
- (2) The Goods will be installed at the Premises at the location or locations specified in the order. The Customer must ensure that an authorised representative of the Customer is at the Premises on the date and at the time the Goods are to be installed to take delivery and acknowledge receipt of the supply of the Goods in accordance with paragraph 6. If any Goods are to be installed at a site, before

- delivery the Customer must provide the Company with the name and telephone number of its representative at the premises who is to take delivery of the Goods.
- (3) Where the supply of the Goods is or is to be by instalment, each supply of the Goods will constitute a separate contract.
- (4) The Customer undertakes to the Company that the Customer will:-
- (a) Procure for the Company free of charge such access to the Premises (including parking facilities at or near the Premises) and such use of the Customer's facilities and will promptly provide to the Company such information as the Company may reasonably require in connection with the supply of the Goods; and
- (b) Notify the Company of all instructions, decisions or consents required to be given or made by the Customer in respect of the supply of the Goods within sufficient time for the Company to fulfil its obligations under the Contract; and
- (c) Ensure that the area designated for installation of the Goods / Services is clean, unobstructed and free from rubbish; and
- (d) Procure that the Premises and the working conditions at the Premises will be safe and in compliance with all applicable legislation, rules and regulations.
- The Company shall not be obliged to install any Goods unless and until the Customer's undertakings in this paragraph 5(4) have been performed.
- (5) If the Customer fails to comply with the requirements of paragraphs 5(2) or 5(4) (unless due to the Company's default):
- (a) Delivery of the order shall be deemed to have been completed at 9.00 am on the date on which the Company notified the Customer that the Goods were ready for installation; and
- (b) The Company may in its discretion either (i) delay installation and arrange for storage of the Goods at the Customer's risk and expense until they are installed (including if applicable storage charges at the Company's then prevailing rates and the cost of any redelivery); or (ii) charge the Customer £50 per hour or part thereof for the time between the time the Company notifies the Customer that the Goods are ready and the time that the Customer or its authorised representative attends the Premises to take delivery and permit installation of the Goods; or (iii) terminate the Contract, sell the Goods in its discretion and, after deducting from the sale proceeds all sale costs and other sums owing to the Company, retain any surplus for its own benefit.

**INSPECTION AND ACCEPTANCE OF THE SUPPLY OF THE GOODS / SERVICES
THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS PARAGRAPH**

6. (1) Following the completion of the supply of the Goods the Customer must:-
- (a) Carefully inspect the Goods, their installation and their condition immediately.
- (b) Immediately inform the Company and state on the despatch note or proof of delivery ("POD") form any claim regarding the quantity or condition of Goods or Services delivered or their installation or any damage to or defect in them or their installation which should be apparent on reasonable inspection.
- (c) Sign the despatch note or POD form to acknowledge receipt of the supply of the Goods.
- (2) If the Customer makes any claim in accordance with paragraph 6(1) it must report details of the claim to the Company by telephone, and written confirmation, on the installation date or within 6(1)(b). Goods cannot be signed for as "Unchecked" (or such similar wording) but, if they are, the Customer will be deemed to have no claim under paragraph 6(1) in respect of them.
- (3) Time will be of the essence for the making of any claim under paragraph 6(1). If no such claim is notified in accordance with that paragraph, so far as concerns those matters the Customer will be deemed to have accepted the Goods and that they conform with the Contract.

TITLE AND RISK

7. (1) Notwithstanding delivery and the passing of risk or any other provision of these Conditions, the legal and beneficial ownership of the Goods will remain with the Company, which retains the right of disposal, until the Company has received payment in cleared funds of:-
 - (a) All sums payable to the Company in relation to the Contract; and
 - (b) All other sums then due from the Customer to the Company in respect of the supply of any other goods or services.
- (2) Until the property in the Goods passes to the Customer it shall:-
 - (a) Hold the Goods as fiduciary agent and bailee for the Company which may, at any time and without prior notice, require the Customer to deliver up the Goods to the Company (whether or not they form part of or are affixed to anything) and, if it fails to do so forthwith, enter upon any land or buildings where the Goods may be situated with its representatives and appropriate transport, remove them from any land, building or other item and repossess the same. The Company will use reasonable skill and care in removing Goods but, subject thereto, the Customer will be responsible for and indemnify the Company in respect of all damage caused by such removal;
 - (b) Not sell, part with possession of or do anything else inconsistent with the Company's ownership of the Goods and ensure they do not become part of or affixed to any land or building and are kept separate from any other thing, properly protected, clearly identified as the Company's property and insured to their replacement value against all normal comprehensive risks.
- (3) After the Company has repossessed any Goods it may sell them, and the sale proceeds will belong to the Company absolutely. If the net proceeds received by the Company are less than the amount payable to it under the Contract it may recover the balance from the Customer.
- (4) Risk in the Goods will pass from the Company to the Customer on delivery or as alternatively provided for in paragraph 5(5). All insurance proceeds receivable by the Customer in respect of the Goods shall be held in trust by the Customer for the Company in a separate account and first be applied in or towards discharging any sums payable under the Contract.

WARRANTY

8. (1) The Company warrants that the Goods will correspond with their specification and description and sample (if any) at the time of delivery. If any defect in the Goods is discovered under normal use which is directly attributable to their not so corresponding or faulty design, materials or workmanship, or a valid claim is made by the Customer under paragraph 6(1), the Company will at its option and expense remedy the defect or damage by replacement or repair or refund the purchase price of the defective or damaged Goods.
- (2) The warranty will be subject to the following conditions:-
 - (a) It will not apply to any defect or damage resulting from any alteration of the Goods without the Company's prior written consent, normal wear and tear, misuse or use other than for the Goods' intended purpose, accident, abnormal conditions of use, use which is not in accordance with the Company's or manufacturer's instructions or procedures issued from time to time or any act or omission of the Customer or any third party (excluding the Company's agents or sub-contractors involved in the supply of the Goods).
 - (b) The Company will not be liable for any defect in the Goods arising from any document, information or materials supplied by or for the Customer.
 - (c) Warranty work will be carried out during the Company's normal business hours so far as is practicable at the Company's premises and/or elsewhere at its option. The Customer must ensure that the Company's personnel will have such access to the Goods as they may require to investigate alleged defects or damage and carry out any warranty work.
 - (d) Goods must be returned securely packaged and labelled carriage paid and accompanied by a copy of the despatch note to the Company's trading premises as required by the Company. The Company will reimburse the Customer the reasonable carriage costs incurred by it in returning by road from the Customer's premises in Great Britain or by other agreed mode of transport Goods

repaired or replaced under the warranty or whose purchase price is refunded. Replaced Goods will belong to the Company.

(e) The Customer must give the Company in writing full particulars of any claim under paragraph 6(1) within the period stated there or under paragraph 8(1) within 7 days after it becomes aware of the same and in any event within 7 days of the date of delivery of the Goods (time being of the essence).

(f) No sum shall be due and unpaid under the Contract when the Company is to fulfil its obligations under the warranty.

(g) If the Customer makes any claim falling outside the terms of the warranty the Company may charge for examining the Goods and any work done or Goods supplied by it in respect of that claim at its then prevailing rates and any cost or expense incurred by the Company.

(h) Paragraphs 8 and 9 will apply to Goods replaced or repaired under the warranty except that the warranty will apply to Goods replaced or repaired under the warranty for the balance of the original warranty period.

LIABILITY

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS PARAGRAPH

9. (1) The warranty will be in substitution for all other terms, warranties, and conditions, express or implied, statutory or otherwise in relation to the supply of the Goods (except for the Company's title to them) which are hereby excluded to the fullest extent permitted by law.
- (2) The Company will not be liable in contract or tort (including negligence) or in any other way for:-
- (a) Any consequential or indirect loss, liability or damage or any other claim for consequential compensation; or
- (b) Loss of any kind of profit, business, goodwill or anticipated savings or other benefits or any costs, expenses or liability to any third party incurred by the Customer arising directly in the natural and ordinary course or indirectly from or in connection with the Contract or the supply of the Goods.
- (3) The Company's liability for all compensation for Property Damage resulting from any negligence on the part of the Company arising in connection with the Contract or the supply of the Goods shall be limited in aggregate to damages of an amount equal to:-
- (a) In the case of all and any Property Damage caused by the supply of the Goods in any one of the Company's insurance for Product Liability £2,000,000 less the Company's total liabilities in relation to all other claims for Product Liability made in respect of that period and which are covered by such insurance.
- (b) In all and any other cases for Property Damage, £2,000,000 in relation to any one occurrence or any one or more occurrences of a series arising out of or attributable to one original cause occurring in any one period of the Company's insurance for such Property Damage, less the Company's total liabilities in relation to all other claims arising from or attributable to any such occurrence(s) made in respect of that period and which are covered by such insurance.
- (4) Excluding its liability under paragraph 9(3) and the Company's aggregate liability arising in contract or tort (including negligence) or otherwise howsoever for any loss, cost, damage, injury or liability (whether consequential, indirect or otherwise) resulting from or in connection with the Contract or the supply of the Goods will be limited to damages equal to the net invoice value of the Goods.
- (5) The limitations on and exclusions from liability contained in these Conditions will be subject to section 2(1) Unfair Contract Terms Act 1977 and will not apply to any liability for fraud.
- (6) The Customer undertakes to indemnify the Company from and against all claims and proceedings brought against the Company by any third party arising from any act or omission on the part of the Customer (or any other person for whom it is vicariously liable) in relation to the supply of the Goods or alleging that the Company's use of any document or information supplied by or for the Customer in relation to the Contract infringes any third party's rights together with all expenses, costs (including

legal costs on a full indemnity basis), damage, losses and liabilities incurred by the Company in connection with any such claims or proceedings.

- (7) The Customer accepts the limitations on and exclusion from liability in these Conditions as reasonable and that without them the price for the supply of the Goods would have been materially increased and warrants that is not purchasing the Goods as a consumer (as defined in the Unfair Contract Terms Act 1977).

TERMINATION

10. (1) If the Customer makes any arrangement or composition with its creditors generally or (being an individual) has an interim order (within the meaning of the Insolvency Act 1986) made against him or becomes bankrupt or (being a firm or body corporate or unincorporate) enters into compulsory liquidation or voluntary liquidation or the equivalent or is dissolved or has a receiver and/or manager, administrative receiver, supervisor or administrator appointed over or in relation to the Customer or any part of its assets or undertaking or is unable to pay its debts within the meaning of sections 123 or 268 Insolvency Act 1986 or anything analogous to any of the foregoing occurs in any jurisdiction in relation to the Customer or the Customer commits any breach of any of the provisions of the Contract (express or implied) the Company may terminate the Contract or the balance of the Contract or suspend deliveries or the supply of any services forthwith by written notice to the Customer without any liability whatsoever. If any of the Goods have been delivered or installed but not paid for the price for the supply of those Goods shall become immediately due and payable on service of such notice.
(2) The Customer will indemnify the Company against all claims, proceedings, loss, damage, liabilities, costs and expenses incurred by the Company arising in connection with any breach by the Customer of, or any act or omission of the Customer in relation to, the Contract.

MISCELLANEOUS

11. (1) The Company will not be deemed to be in breach of the Contract or otherwise be liable to the Customer for any delay or failure in performing any of its obligations under the Contract by reason of any cause or event beyond the Company's reasonable control (including breakdown of plant or machinery, strike or industrial dispute, shortage of materials or failure of or delay in receiving supplies).
(2) The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), will be governed by and construed in accordance with the laws of England and all claims and proceedings arising relating to it will be subject to the non-exclusive jurisdiction of the Courts of England.
(3) Any variation of the Contract or waiver of any breach by the Customer must be agreed to in writing by the Company's authorised representative. Any time or indulgence given by the Company will not in any way prejudice any of its rights in respect of the Contract.
(4) If any provision of the Contract or part of it is held to be invalid or unenforceable by any court or other body of competent jurisdiction that will not affect the other provisions or the remainder of the relevant provision.
(5) The Customer may not assign or otherwise deal with all or any of its rights or obligations in relation to the Contract without the Company's prior written consent, but the Company will be free to do so.
(6) The Company's rights under these Conditions are cumulative and in addition to its other rights.
(7) Any notice or claim under the Contract must be in writing and will be effectively served if it is personally delivered or sent by prepaid first-class post or facsimile transmission to the addressee at its address overleaf or any other address for service notified to the other party in accordance with this paragraph.
(8) The Contracts (Rights of Third Parties) Act 1999 will not apply to the Contract.