



# ITDP Solutions Limited Terms & Conditions

## 1. GENERAL

All orders are accepted by ITDP Solutions Limited whose registered office is situated at 77 Queens Road, Buckhurst Hill, Essex, IG9 5BW on these conditions of sale which supersede any other terms unless specifically agreed in writing by a Director of ITDP Solutions Limited. These conditions override and supersede and exclude any other terms stipulated or incorporated or referred to by the Customer (being the purchaser or receiver of computer Software (hereinafter referred to as "the Software") under the terms of this Agreement) whether in the order or during any negotiations or any course of dealing between ITDP Solutions Limited and the Customer and constitute the entire understanding between ITDP Solutions Limited and the Customer for the sale of Software to the Customer by ITDP Solutions Limited. All descriptions or representations contained in pre-contractual negotiations are expressly excluded from any contract between ITDP Solutions Limited and the Customer. In these conditions "Agreement" shall refer to the contract between ITDP Solutions Limited under the terms of these conditions and "Software" shall refer to the Software and/or onsite time and /or equipment supplied to the Customer in accordance with ITDP Solutions Limited quotation and specification which is incorporated into the terms of this Agreement as though set out in full in the body of the same.

## 2. SOFTWARE PRICES & SPECIFICATIONS

(2.1) Prices quoted to the Customer are "net trade" and exclude Value Added Tax and carriage. Value Added Tax will be charged at the applicable rate at the date of delivery. Unless otherwise agreed in writing the price of the Software shall be the price agreed by the parties in writing as at the date of formation of the contract. ITDP Solutions Limited reserve the right to modify prices to take account of increased costs in particular but not limited to those resulting from any revaluation of currency, increase in or change of tax, duty or other impost or charge, or legislation passed after the date of quotation but prior to delivery to the Customer.

(2.2) Software is supplied in accordance with the specification agreed between ITDP Solutions Limited and the Customer. ITDP Solutions Limited shall not be obliged to agree to any modifications to agreed specifications that the Customer may wish to make, but if ITDP Solutions Limited does agree to any modifications, then it shall have the absolute right to make any adjustment it considers appropriate in the price of the Software and clause (2.1) hereof shall not apply.

(2.3) Technical information given by ITDP Solutions Limited concerning the Software is accurate to the best of knowledge of ITDP Solutions Limited but does not form part of the contract between ITDP Solutions Limited and the Customer unless specifically agreed in writing by ITDP Solutions Limited.

## 3. ONSITE CHARGES & WORKING DAY

(3.1) Onsite time charged to the client on a daily basis at the rates quoted in the Contract Letter. Fractions of a day are charged on an hourly pro rata basis.

(3.2) These rates do not include Value Added Tax which will (where appropriate) be added to the amount of an invoice at the prevailing rate.

(3.3) Charges will not be made for complete days during the assignment which are not spent directly on the assignment such as public and annual holidays, sickness, and temporary absence for any other reason.

(3.4) Charges exclude travel or hotel expenses and the costs of materials and services not provided directly by ITDP Solutions Limited. Any expenses necessarily incurred in the course of the assignment will be charged at cost. Clause 9 of these Terms and Conditions outlines how expenses are calculated for site work.

(3.5) The rates quoted will be fixed for the initial period of the assignment, or for six months, whichever is the shorter. Charge rates will be assessed from time to time.

(3.6) The normal working day is seven hours plus one hour for a lunch break. This may be subject to alteration by mutual agreement for work carried out on the client's premises. Assignments will be full time unless otherwise specified.

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(3.7) Overtime is charged at time and a half and work carried out during week-ends, or public holidays is charged at double time. Where the required working period is substantially outside the normal working day the charge rate premium will be subject to negotiation.

#### **4. INVOICING AND PAYMENT**

(4.1) Unless otherwise specifically agreed in writing between ITDP Solutions Limited and the Customer payment for the Software is due in full and without deduction of any sort within 30 (thirty) days of delivery to the Customer of the Software.

(4.2) In the event that payment is not made within 30 (thirty) days of delivery then ITDP Solutions Limited shall be entitled to charge interest at the rate of 2% (two percent) per calendar month or part thereof by which payment is late, or shall be entitled to charge interest at the rate obtaining for judgements given in the High Court of Justice in England from time to time, whichever ITDP Solutions Limited shall choose in its absolute and sole discretion.

(4.3) In the event ITDP Solutions Limited exercises its option to repossess Software under the terms of this agreement, then the Customer shall nevertheless be liable for payment of amounts due under this clause by way of interest or costs in respect of the period between the due date for payment under the terms of this agreement and the date when repossession of the Software takes place.

(4.4) In the event that ITDP Solutions Limited employs solicitors or debt collectors or agents or otherwise howsoever to assist in the recovery of monies due, or in the repossession of its Software, which ITDP Solutions Limited may in its sole and absolute discretion employ, then the Customer shall be liable to pay, without deduction, the whole of the costs or fees of such solicitors, debt collectors or agents or otherwise howsoever.

#### **5. OWNERSHIP AND CONFIDENTIALITY**

(5.1) The Client shall not acquire title to the Intellectual Property Rights in the Software, the Documentation or the other Deliverables (excluding Client Data) which are developed and/or supplied hereunder.

(5.2) Information provided by the client relating to the assignment will be treated as confidential unless specific authorisation to release it is given by the client or the information comes into the public domain. ITDP Solutions Limited will ensure that its employees and sub-contractors are bound by provisions similar to those contained herein. This clause shall continue to apply notwithstanding the termination of this assignment.

#### **6. LIABILITY**

(6.1) ITDP Solutions Limited will carry out the assignment with reasonable care and skill, but shall not under any circumstances in relation to its carrying out the assignment be liable (whether in contract, tort or otherwise) for any loss or damage of whatsoever nature (including indirect or consequential loss or damage) suffered by the client whether arising from any act, default or neglect on the part of ITDP Solutions Limited, its employees, agents or sub-contractors or otherwise howsoever, to the extent that the amount of such loss or damage exceeds (or would when aggregated with the amount of any previous loss or damage exceed) the greater of the amount (if any) which ITDP Solutions Limited is entitled to claim under the terms of any insurance policy for the time being in force, up to a maximum of Five hundred thousand pounds (£500,000).

(6.2) ITDP Solutions Limited shall not in any event be liable for any indirect or consequential loss whatever or however caused.

(6.3) The client agrees fully and promptly to indemnify ITDP Solutions Limited against all costs, claims, demands, damages and expenses to which ITDP Solutions Limited may become liable or which ITDP Solutions Limited may suffer or incur as a result directly or indirectly of ITDP Solutions Limited's acting in accordance with the client's instructions or arising from any act, default or neglect on the part of the client, its employees, agents or subcontractors.

(6.4) Notwithstanding anything to the contrary, however, nothing in these terms and conditions shall operate to exclude or restrict ITDP Solutions Limited's liability for death or personal injury resulting from negligence within the meaning of the Unfair Contract Terms Act 1977.

#### **6. STAFF TRANSFER**

(6.1) It is a condition of acceptance of any assignment that neither the client nor ITDP Solutions Limited during the assignment and for twelve months after the assignment employs directly or

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indirectly, makes or seeks to make any offer of employment to any of the other's staff engaged on the assignment.

(6.2) The client shall procure that none of its customers or clients during the assignment and for twelve months after the assignment employs directly or indirectly, makes or seeks to make any offer of employment to any of ITDP Solutions Limited 's staff engaged on the assignment.

(6.3) The client shall procure that none of its contractors or consultants during the assignment and for a period of twelve months after the assignment employs directly or indirectly, makes or seeks to make any offer of employment to any of ITDP Solutions Limited 's staff engaged on the assignment with a view to that member of ITDP Solutions Limited 's staff being engaged in the provision of services to the client.

## **7. CANCELLATION**

When an end date for the assignment has not been specified, or should either the client or ITDP Solutions Limited wish to terminate an assignment prematurely, the terminating party shall give four weeks written notice to the other.

## **8. STAFF SUBSTITUTION**

Whilst all reasonable efforts will be made to use the nominated staff on the assignment, ITDP Solutions Limited reserves the right to replace any nominated staff if it becomes necessary or expedient so to do. If any staff are to be replaced, ITDP Solutions Limited will give to the client as much advance notice as the circumstances permit.

## **9. ONSITE WORK**

For site work travelling time in excess of the employee's normal travel to work time will be charged at cost. On such journeys the cost of air travel, rail travel or a car mileage allowance at the prevailing company rate will be charged (as appropriate). For site work involving overnight stays the cost of bed, breakfast and evening meal, any incidental expenses such as travel and medical insurance (outside UK only), plus the cost of ITDP Solutions Limited 's standard employee disturbance allowance will be charged.

## **11. TERMINATION**

The assignment may be terminated by either party by notice in writing to the other having immediate effect if the other shall commit any breach of these Terms and Conditions together with those in the Contract Letter which breach (if capable of remedy) is not remedied within 14 days of notification or if the other shall have a receiver or administrative receiver appointed of it or over any part of its undertaking or assets or shall pass a resolution for winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the other party shall become subject to an administration order or shall enter into voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business. The termination of the assignment (howsoever arising) shall be without prejudice to the rights and remedies of the parties accrued before such termination and nothing shall prejudice the right of either party to recover any amount outstanding (whether invoiced or due to be invoiced) at the termination howsoever caused.

## **12. FORCE MAJEURE**

If due performance of the assignment by either party is affected in whole or in part by reason of any event, omission, accident or other matter beyond the reasonable control of such party, such party shall give prompt notice thereof to the other party and shall be under no liability for any loss, damage, injury or expense (whether direct or consequential) suffered by the other party due to the affected performance. Such party shall use all reasonable efforts to avoid or overcome the causes affecting performance and shall fulfil all outstanding performance as soon as it becomes practical to do so.

## **13. SEVERABILITY**

In the event that any court of competent jurisdiction finds any clause or sub clause or any part thereof of this agreement to be unenforceable at English Law, then the agreement shall be read and construed as if such clause or sub clause or part thereof were not part of the agreement and the remainder of the agreement shall be enforceable, notwithstanding that part or parts which may be unenforceable.

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#### **14. WHOLE AGREEMENT**

These Terms and Conditions together with those in the Contract Letter shall apply to any contract for the provision by ITDP Solutions Limited to the client of professional services constitutes the entire contract between ITDP Solutions Limited and the client and supersedes all previous communications, representations and contracts either written or oral. In the case of any inconsistency between these Terms and Conditions and those in the Contract Letter, the ones in the Contract Letter shall prevail. The printed terms and conditions of any purchase order or other correspondence of the Client in connection with the Contract shall not apply. The client acknowledges that it is not entering into the contract in reliance upon any representation not set out in the contract. No amendment to the contract shall be binding unless in writing, signed by the parties or their duly authorised representatives and expressed to be for the purpose of such amendment.

#### **18. GOVERNING LAW**

The contract shall be construed in accordance with and governed by English law and each party hereby submits to the non-exclusive jurisdiction of the English Courts. Headings have been included for convenience only and shall not be used in construing any provision herein.