

Elmtec (A trading division of Man and Machine Ltd) Terms and Conditions of Sale

1 DEFINITIONS

- 1.1 "Customer" means the party identified as the Customer in this Agreement to whom Elmtec may agree to supply Products in accordance with these terms and conditions
- 1.2 "Elmtec" means Elmtec of Unit 8, Thame 40, Jane Morbey Road, Thame, Oxfordshire, OX9 3RR or any subsidiary or associated company
- 1.3 "Products" means goods or services including, but not limited to, computer hardware and software items to be supplied by Elmtec to the Customer in accordance with these terms and 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 Elmtec) and which comprises part of the Products

2 ORDERS AND ACCEPTANCE

- 2.1 All orders placed with Elmtec by the Customer for Products constitute an offer to Elmtec, under these terms and conditions, subject to availability of the Products and to acceptance of the order by Elmtec's authorised representative
- 2.2 Orders are only considered as accepted by Elmtec when the customer receives an order acknowledgement from Elmtec
- 2.3 All orders are accepted and Products supplied subject to these express terms and conditions only. No amendment to these terms and conditions is valid unless Elmtec's authorised representative confirms it in writing after the date of acceptance
- 2.4 These terms and conditions will prevail over the Customer's terms and conditions of purchase unless these terms and conditions are amended by Elmtec in writing and signed by a duly authorised representative of Elmtec

3 INDEPENDENT CONTRACTOR

- 3.1 Elmtec and the Customer are independent contractors
- 3.2 Neither party is the agent of the other
- 3.3 Neither party has any authority to enter any contract or make any obligation expressly or impliedly in the name of the other party
 - 3.3.1 without that party's prior written consent; and
 - 3.3.2 for purposes expressly connected with the performance of this Agreement

4 DESPATCH

- 4.1 Any time quoted for despatch is to be treated as an estimate only
- 4.2 Despatch may be postponed because of conditions beyond Elmtec's reasonable control, and in no event is Elmtec to be liable for any damages or penalty for delay in despatch or delivery
- 4.3 If products have not been received, the Customer must notify Elmtec within 3 days of the date of the invoice otherwise no liability can be accepted for goods lost in transit.
- 4.4 Elmtec accept no liability for goods that have been damaged in transit unless the damage was noted when the goods were signed for and Elmtec is informed within 3 days.
- 4.5 If the Products are rejected by the Customer as not being in accordance with the Customer's order, Elmtec will only accept the return of such Products if it receives notification within 14 days of delivery giving detailed reasons for rejection. [Elmtec will not consider any claim for compensation, indemnity or refund under liability, unless it has been established or agreed with the manufacturer and, where applicable, the insurance company].
- 4.6 If incorrect shipping details are provided to Elmtec on the order or if the customer later requests for the goods to be shipped elsewhere, Elmtec reserve the right to change the customer for redelivery to the correct address.

5 CANCELLATION AND RESCHEDULING

- 5.1 Elmtec will only consider requests for cancellation or rescheduling of orders that have not yet been despatched. Elmtec may either accept or reject such requests and may make an administration charge.

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- 5.2 The Customer agrees to indemnify Elmtec against all proper and reasonable losses, costs (including the cost of labour and materials used and overheads incurred), damages, charges and expenses arising out of the cancellation or rescheduling of the order

6 PRICING

- 6.1 Catalogues, price lists and other advertising literature or material as used by Elmtec are intended only as an indication of the price and range of goods offered and prices, descriptions or other particulars contained in them do not bind Elmtec
- 6.2 All prices are given by Elmtec at the time of the order on an ex-works basis and the Customer must pay for transport, packing and insurance
- 6.3 All price lists and quotes are officially only valid on the day that they are issued and are subject to change without prior notice. Elmtec will usually keep pricing fixed for at least the calendar month wherever possible, but we are not legally bound to do so.
- 6.4 All prices are exclusive of Value Added Tax and any other similar taxes. All such taxes are payable by the Customer and will be applied in accordance with UK legislation in force at the tax-point date

7 PAYMENT TERMS

- 7.1 Elmtec will raise and date invoices on the date of despatch of the Products
- 7.2 Non credit account Customers will be supplied strictly on a payment (by cleared funds) with order basis only
- 7.3 Elmtec will apply a surcharge to all Credit card payments.
- 7.4 All credit accounts must be settled within the payment terms that are set out on the invoice.
- 7.5 The amount paid against an invoice can only be reduced by the application of a Elmtec credit note, not by customer generated debit notes.
- 7.6 If the Customer does not settle invoices by the due date or fails to keep within agreed credit terms Elmtec may suspend delivery of current orders and / or withdraw or amend credit facilities
- 7.7 Elmtec will charge interest on overdue payments at the rate of 4% per annum above the base rate for the time being of HSBC Plc. Such interest will accrue on a daily basis and be payable on demand both before and after judgement.
- 7.8 Title to Products only passes to the Customer when the Customer has paid in full all prices, taxes and charges due in respect of the Products and any Products supplied previously to the Customer in accordance with condition 7.7 below
- 7.9 Payment must be in cash or cleared funds
- 7.10 Until property in the Products passes to the Customer;
- 7.10.1 the Customer must:
- 7.10.1.1 hold the Products as Elmtec's fiduciary agent and bailee;
- 7.10.1.2 keep the Products properly stored, protected and insured and identified as Elmtec's property;
- 7.10.1.3 account to Elmtec for the proceeds of sale or otherwise of the Products, whether tangible or intangible, including insurance proceeds;
- 7.10.1.4 keep all such proceeds separate from any monies or property of the Customer and third parties;
- 7.10.1.5 keep tangible proceeds, properly stored, protected and insured; and;
- 7.10.1.6 is entitled to resell or use the Products in the ordinary course of its business
- 7.11 Until property in the Products passes to the Customer and provided the Products are still in existence and have not been resold, Elmtec is entitled at any time to demand the return of the Products to Elmtec. If the Customer fails to do so forthwith, Elmtec may enter upon any premises of the Customer or any third party where the Products are stored and repossess the Products
- 7.12 If any of the circumstances set out in clauses 13.3.1 - 13.3.9 inclusive occurs to the Customer, the Customer's power of sale or right to use the Products ceases immediately

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- 7.13 On termination of the Customer's power of sale or its right to use the Products, the Customer will immediately hold the Products to the order of Elmtec
- 7.14 The Customer is not entitled to pledge or in any way charge by way of security for any indebtedness any of the Products that remain the property of Elmtec. If the Customer does so, then (without prejudice to any other right or remedy of Elmtec) the Customer must immediately pay all monies owing by the Customer to Elmtec immediately become due and payable
- 7.15 Elmtec reserves the right to stop supplies of products to the Customer at any time. On such cessation of supplies, Elmtec reserves the right to withdraw any credit facility so that the whole of the Customer's account becomes due for payment forthwith

8 SPECIFICATION OF PRODUCTS

- 8.1 Elmtec will not be liable in respect of any loss or damage caused by or resulting from:
 - 8.1.1 any variation for whatsoever reason in the manufacturer's specifications or technical data; or
 - 8.1.2 curtailment or cessation of supply following such variation
- 8.2 Elmtec will advise the Customer of any such impending variation as soon as the manufacturer notifies Elmtec
- 8.3 Unless otherwise agreed, Elmtec supplies the Products in accordance with the manufacturer's standard specifications as these may be improved, substituted or modified from time to time
- 8.4 Elmtec 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. Elmtec will not accept cancellations or returns of such Products

9 PROPRIETARY RIGHTS IN SOFTWARE PRODUCTS

- 9.1 The Customer acknowledges that:
 - 9.1.1 any proprietary rights in any Third Party Software supplied under these terms and conditions 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; and
 - 9.1.2 it is its sole responsibility to comply with any terms and conditions of licence attaching to Third Party Software supplied and delivered by Elmtec (including, if so required, the execution and return of a Third Party Software licence)
- 9.2 Failure to comply with such terms and conditions could lead to the refusal or revocation of a software licence
- 9.3 The Customer will indemnify Elmtec in respect of any costs, charges or expenses incurred by Elmtec at the suit of a Third Party Software owner as a result of any breach by the Customer of such conditions

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 CIRCUMSTANCES

10 RETURNS

- 10.1 Elmtec reserves the right to make an administration charge (restocking fee) in respect of the return of Products. This will be the minimum of £25 or 5% of the original order value.
- 10.2 Returns are only accepted subject to the following:
 - 10.2.1 manufacturers current stock rotation policy;
 - 10.2.2 products must be security packed and clearly identified by return authorisation number supplied by Elmtec;
 - 10.2.3 products must be in a saleable condition with all seals intact, manuals etc and packaging undamaged unless product is accepted as faulty;
 - 10.2.4 products must still be covered by manufacturers warranty period
- 10.3 Elmtec reserves the right to reject any Products that do not comply with clause 10.2
- 10.4 If the customer requests a return for the reasons of either customer order error or end user cancellation, Elmtec must receive the RMA request within 7 days of invoice and

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- products must be in a re-saleable condition. In this case the customer will be required to pay for the return carriage to Elmtec.
- 10.5 If Elmtec is at fault, i.e shipping incorrect product or duplicate order, the customer must inform Elmtec within seven days of the date of the invoice and products must be in a re-saleable condition.

11 WARRANTY

- 11.1 Elmtec warrants that it has good title to, or licence to supply, all Products to the Customer
- 11.2 If any part of the hardware Products proves defective in materials or workmanship under normal operation or service, they will be repaired or replaced only in accordance with any warranty cover or terms as provided by the manufacturer of the Products and on condition that there have been no unauthorised modifications to the Product or to the system of which the Products form part. Elmtec is not responsible for the cost of labour or other expenses incurred in repairing defective or non-conforming parts
- 11.3 All software Products are supplied "as is" and Elmtec will use its reasonable endeavours to obtain and supply a corrected version from the manufacturer concerned if such software Product fails to conform to product description. This clause only applies if the Customer notifies Elmtec of any such non-conformity within 60 days of the date of delivery of the relevant software Product

EXCEPT AS SPECIFICALLY SET OUT IN THIS CLAUSE, OR WHERE THE CUSTOMER DEALS AS A CONSUMER, ELMTEC DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, BY STATUTE OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF DESCRIPTION, DESIGN, QUALITY AND FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM ANY PREVIOUS COURSE OF DEALING, USAGE OR TRADE PRACTICE

12 INDEMNITIES AND LIMITS OR LIABILITY

- 12.1 Elmtec will indemnify the Customer for direct physical injury or death caused solely by defects in any of the Products or by the negligence of its assigned employees acting within the course of their employment and the scope of their authority.
- 12.2 Elmtec will indemnify the Customer for direct damage to property caused solely by defects in any of the Products or caused solely by the negligence of its assignee employees acting within the course of their employment and the scope of their authority. The total liability of Elmtec under this sub-clause is limited to £1,000,000 for any one event or series of connected events
- 12.3 Except as stated in the above clauses, Elmtec disclaims and excludes all liability to the Customer in connection with these terms and conditions including the Customer's use of the Products. Elmtec will not be liable to the Customer for special, indirect or consequential damage including, but not limited to, loss of profits arising from loss of data or in connection with the use of the Products
- 12.4 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 excluded
- 12.5 The Customer must indemnify Elmtec and its employees in respect of any claims by third parties which are occasioned by or arise from any Elmtec performance or non-performance of its obligations when acting on the instructions of the Customer or its authorised representative

13 TERMINATION CLAUSE

- 13.1 If the Customer fails to pay any sums due under this agreement by the due date, then, notwithstanding any provisions for late payment, Elmtec may end this agreement forthwith by notice in writing
- 13.2 Either party may end this agreement if the other fails to perform its obligations within 14 days after receipt of written notice of the breach from the other
- 13.3 If either party:

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- 13.3.1 is involved in any legal proceedings concerning its solvency; or
 - 13.3.2 ceases trading; or
 - 13.3.3 commits an act of bankruptcy; or
 - 13.3.4 is adjudicated bankrupt; or
 - 13.3.5 being a company, enters liquidation, whether compulsory or voluntary, other than for the poses of an amalgamation or a reconstruction; or
 - 13.3.6 makes an arrangement with creditors; or
 - 13.3.7 petitions for an administration order; or
 - 13.3.8 has a Receiver or Manager appointed over all or nay part of its assets; or
 - 13.3.9 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 end this Agreement forthwith
- 13.4 Any termination of this Agreement pursuant to this clause is without prejudice to any other rights or remedies to which a party may be entitled under this Agreement or at law, and does not affect any accrued rights or liabilities of either party

14 EXPORT AND / OR RE-EXPORT LIMITATION

Having regard to the current statutory or other United Kingdom government regulations and, in the case of Products manufactured in the United States of America, to the current export rules and regulations of the United States Department of Commerce in force from time to time and regardless of any disclosure made by the Customer to Elmtec of an ultimate destination for any Products, the Customer will not export or re-export any Products without first obtaining all such written consents or authorisations as may be required by any applicable government regulations

15 CONTRACT

- 15.1 The headings in this Agreement are for ease of reference only and shall not affect its interpretation or construction
- 15.2 No forbearance, delay, indulgence by either party in enforcing its respective rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or any later breach
- 15.3 The Customer agrees not to assign any of its rights under this Agreement without the prior written consent of Elmtec
- 15.4 A finding by a court or other competent tribunal that any of these terms and conditions or any part of them is illegal or non-enforceable for any reason will not affect the remainder of them
- 15.5 Neither party shall be liable to the other for any delay or failure to perform its obligations under this Agreement (other than a payment of money) where such delay or failure results from force majeure, act of God, fire, explosion, and accident, industrial dispute or any cause beyond its reasonable control
- 15.6 Any documents or notices sent or served by either party 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 two working days after the date of posting
- 15.7 Documents or notices must 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
- 15.8 These terms and conditions shall be construed in accordance with English law