

Microcare Systems Limited
Terms and Conditions for Sale Customers
Date 1st June 2010

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in these conditions.

Contract: the Customer's order (as set out in the order form to which these Conditions are attached) and Microcare's acceptance of it in accordance with condition 3.3.

Customer: the person, firm or company who purchases Equipment and Services from Microcare.

Delivery: takes place when Equipment is unloaded at a Site.

Equipment: the equipment agreed in the Contract to be purchased by the Customer from Microcare (including any part or parts of it).

Intellectual Property Rights: patents, copyright, trade

marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Microcare: Microcare Systems Limited (company number 3204267).

Services: the services agreed in the Contract to be supplied to the Customer by Microcare.

Site: means any premises or site where Equipment is to be delivered and/or Services are to be performed.

Software: any operating system installed on the Equipment.

VAT: value added tax chargeable under English law for the time being.

1.2 Condition headings do not affect the interpretation of these conditions.

1.3 A reference to a law is a reference to it as in force for the time being taking account of any amendment extension application or reenactment and includes subordinate legislation for the time being in force made under it.

2. APPLICATION OF CONDITIONS

2.1 These conditions shall apply to and be incorporated in the Contract and shall prevail over any inconsistent terms or conditions contained in or referred to in the Customer's purchase order, confirmation of order or implied by law, trade custom, practice or course of dealing.

2.2 No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on Microcare unless in writing and signed by a duly authorised representative of Microcare.

3. BASIS OF SALE

3.1 Any quotation is valid for a period of 30 days only and Microcare may withdraw it at any time by notice to the Customer.

3.2 Each order or acceptance of a quotation for Equipment and Services by the Customer shall be deemed to be an offer by the Customer subject to these conditions.

3.3 A binding contract shall not come into existence between Microcare and the Customer until the order form is signed by a duly authorized representative of Microcare.

3.4 Microcare may deliver the Equipment and Services by separate instalments. Each separate installment shall be invoiced and paid for in accordance with the provisions of the applicable Contract. Each instalment shall be a separate Contract and no cancellation or termination by either party of any one Contract relating to an installment shall entitle the Customer to repudiate or cancel any other Contract or instalment.

3.5 No order acknowledged by Microcare may be cancelled by the Customer, except as agreed in writing of Microcare and provided that the Customer indemnifies Microcare in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Microcare as a result of cancellation.

3.6 The contract between Microcare and the Customer is not dependent upon the Customer obtaining finance. In the event the Customer is seeking finance it shall pay to Microcare 10 working days from the date of the order by direct debit a deposit equal to 50% of the value of the Equipment which shall be held as follows:

3.6.1 in the event that the Customer obtains the necessary finance the deposit shall be credited to the Customer;

3.6.2 in the event that the Customer does not obtain finance it may:

3.6.2.1 cancel the Contract but in doing so forfeit the deposit;

3.6.2.2 continue with the Contract paying the balance of the sum due (less the deposit) by direct debit or such other method as is agreed between Microcare and the Customer.

4. QUANTITY AND DESCRIPTION

4.1 The quantity and description of the Equipment and Services shall be as set out in Microcare's quotation or (if there is no quotation) order.

4.2 All drawings, specifications and advertising issued by Microcare, and any descriptions or illustrations contained in Microcare's brochures are issued for illustrative purposes only and do not form part of the Contract.

4.3 Any typographical or other error or omission in any sales literature, quotation, price list, invoice or other document or information issued by Microcare shall be subject to correction without any liability on the part of Microcare.

4.4 Microcare reserves the right (but does not assume the obligation) to make any changes in the specification of the Equipment and Services which are required to conform with any applicable legislation. Where Microcare is not the manufacturer of the Equipment Microcare shall use reasonable endeavours to transfer to the Customer the benefit of any warranty or guarantee given by the manufacturer to Microcare.

4.5 Microcare's employees, contractors and agents are not authorised to make any contractually binding representations concerning the Equipment and Services. In entering into the Contract, the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which have not been confirmed in writing by an authorized officer of Microcare. However, nothing in these conditions limits Microcare's liability for fraudulent misrepresentation.

4.6 Any advice or recommendation given by Microcare or its employees, contractors or agents to the Customer or its employees, contractors or agents about the storage, application or use of the Equipment and Services which is not confirmed in writing by an authorised officer of Microcare is followed or acted on entirely at the Customer's own risk.

PRICES

5.1 All prices are exclusive of delivery, packaging, carriage, insurance, VAT and other charges and duties.

5.2 The price of the Equipment and Services shall be Microcare's quoted price or where no price has been quoted (or a quoted price is no longer valid) the price listed in Microcare's price list current at the date of acceptance of the order.

5.3 Microcare reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of such of the Equipment and Services as has not been delivered to reflect any increase in the cost to Microcare which is due to any factor beyond the control of Microcare (including change in legislation, significant increase in the costs of labour or materials), any change in delivery dates, quantities or specifications for the Equipment and Services which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give Microcare adequate information or instructions.

6. PAYMENT

6.1 Subject to any special terms agreed in writing between the Customer and Microcare, Microcare may invoice the Customer for the price of the Equipment and Services on or at any time after delivery of the Equipment and Services, unless the Equipment are to be collected by the Customer or the Customer wrongfully fails to take delivery of the Equipment, and in either case Microcare shall be entitled to invoice the Customer for the price at any time after Microcare has notified the Customer that the Equipment is ready for collection. All invoices shall be sent by email.

6.2 The terms of payment shall be as follows:

(1) New equipment installs 50% on acceptance of the Customer's order and the balance on completion of the installation

(2) All other services within 7 days of the date of Microcare's invoice, whether or not delivery has taken place or title in the Equipment has passed to the Customer.

6.3 Time for payment of the price shall be of the essence of the Contract.

6.4 If the Customer fails to make payment in full on the due date, the whole of the balance of the price of the Equipment and Services then outstanding shall become immediately due and payable and, without prejudice to any other right or remedy available to Microcare, Microcare may:

(a) terminate the Contract or suspend any further deliveries of Equipment and Services (whether ordered under the same contract or not) to the Customer;

(b) appropriate any payment made by the Customer to such of the Equipment and Services (or the Equipment and Services supplied under any other contract between the Customer and Microcare) as it thinks fit;

(c) charge interest on the amount outstanding from the due date to the date of receipt by Microcare (whether or not after judgment) at the annual rate of 4% per annum above the base lending rate from time to time of Barclays Bank plc accruing on a daily basis until payment is made whether before or after any judgment. Microcare reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998;

(d) suspend all further delivery, installation or maintenance service until payment has been made in full.

(e) make a storage charge for any undelivered Equipment and an administration charge of £45 in relation to the overdue amount at its current rates from time to time;

(f) stop any Equipment and Services in transit; and

(g) a general lien on all Equipment and property belonging to the Customer, exercisable in respect of all sums lawfully due from the Customer to Microcare. Microcare shall be entitled, on the expiry of 14 days' notice in writing, to dispose of such Equipment or property in such manner and at such price as it thinks fit and to apply the proceeds towards the amount outstanding.

6.5 All sums payable to Microcare under the Contract shall become due immediately on its termination, despite any other provision of the Contract. This condition 6.5 is without prejudice to any right to claim for interest under the law or any right under the Contract.

6.6 Microcare may, without prejudice to any other rights it may have, set off any liability of the Customer to Microcare against any liability of Microcare to the Customer.

7. DELIVERY OF EQUIPMENT AND SERVICES

7.1 Microcare shall use reasonable endeavours to deliver the Equipment and Services on the date or dates specified in the Contract but any such date is approximate only. If no dates are so specified delivery shall be within a reasonable time of acceptance of the order. Time is not of the essence as to the delivery of the Equipment and Services and Microcare is not liable for any delay in delivery however caused.

7.2 The Equipment and Services may be delivered by Microcare in advance of the quoted delivery date on giving reasonable notice to the Customer.

7.3 Delivery shall be made during normal business hours (excluding bank or public holidays). Microcare may levy additional charges for any deliveries made outside such hours at the Customer's request.

7.4 The Customer shall be responsible (at the Customer's cost) for preparing the delivery location for the delivery of the Equipment and Services and for the provision of all necessary access and facilities reasonably required to deliver and install the Equipment and Services. If Microcare is prevented from carrying out delivery or installation on the specified date because no such preparation has been carried out, Microcare may levy additional charges to recover its loss arising from this event.

7.5 The Customer shall be deemed to have accepted the Equipment and Services when the Customer has had 2 days to inspect it after delivery and has not exercised in writing its right of rejection in accordance with condition 10.

8. ACCEPTANCE

8.1 If Microcare installs Equipment under this contract, it will test the Equipment in accordance with the manufacturer's test specifications. Acceptance is deemed to occur:

- When the Equipment has been connected to the network, and operated to provide its main functions except for minor variances in performance that do not materially affect those main functions;

- if the Customer puts the Equipment into use;

- If the Equipment has been tested by Microcare and made available to provide its main functions to the customer even if, through no fault of the company, it is not actually used by the customer. If it is agreed in writing that the Equipment will be installed in phases, each phase shall constitute a separate Support Schedule and Microcare carry out Acceptance testing for each phase.

8.2 If Microcare agrees to delay Delivery or installation of Equipment at the request of the Customer or if Delivery or installation is delayed because of a breach of these Terms by the Customer, acceptance shall be deemed to have occurred 30 days after Microcare notifies the Customer that the Equipment is ready for Delivery.

8.3 If Equipment is sold but not installed by Microcare, acceptance is deemed to occur upon Delivery.

8.4 If during testing an item of Equipment is found to be defective, Microcare shall rectify the defect or replace the item with a new or an equivalent item, and the Equipment shall be re-tested.

8.5 Microcare will not accept responsibility for any claims for shortages, discrepancies or damage to Equipment unless the Customer notifies Microcare in writing as soon as possible and at the latest within 48 hours of Delivery.

9. CUSTOMER RESPONSIBILITIES

9.1 The Customer shall provide Microcare with all information relevant to delivering the Equipment or performing the Services, including but not limited to floor plans and utility diagrams, details of equipment, wiring or conditions that might affect or be affected by the Services, and details of any hazardous or potentially hazardous conditions.

9.2 The Customer shall prepare the Site for the installation of Equipment as required by Microcare and notified to the Customer. The Customer agrees to allow Microcare to deliver and / or install the Equipment as soon as Microcare is ready to do so.

9.3 The Customer shall provide facilities as reasonably required by Microcare to provide the Services.

9.4 The Customer shall ensure safe and suitable conditions to allow Microcare to perform the Services. The Customer agrees to ensure that all Sites comply with all relevant laws and regulations.

9.5 The Customer shall co-operate with and assist

Microcare as reasonably required in connection with the Services.

9.6 The Customer shall immediately notify Microcare of any inability or anticipated delay in meeting any obligations set out in this clause.

9.7 The Customer agrees to ensure performance of its obligations in this clause 9 at its own cost and without delay. If the Customer fails to ensure that any of its obligations under this clause 9 or these Terms is met without delay, it shall pay, at Microcare's current rates, for any resulting reasonable costs and expenses incurred by Microcare.

10. RISK AND PROPERTY

10.1 The Equipment shall be at the risk of Microcare until delivery to the Customer at the place of delivery specified in the Contract. Microcare shall off-load the Equipment and Services at the Customer's risk.

10.2 Ownership of the Equipment shall pass to the Customer on the later of completion of delivery or when Microcare has received in cleared funds all sums due to it in respect of the Equipment and all other sums which are or which become due to Microcare from the Customer on any account.

10.3 Until ownership of the Equipment has passed to the Customer, the Customer shall:

- (a) hold the Equipment on a fiduciary basis as Microcare's bailee;

(b) store the Equipment (at no cost to Microcare) separately from all the Customer's other equipment or any third party so that it remains readily identifiable as Microcare's property;

(c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Equipment; and

(d) keep the Equipment insured on Microcare's behalf for its full price against all risks and hold the proceeds of such insurance on trust for Microcare and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

10.4 The Customer's right to possession of the Equipment before ownership has passed to it shall terminate immediately if any circumstance set out in condition 15 arises or if the Customer encumbers or charges the Equipment or if the Customer fails to make any payment to Microcare on the due date.

10.5 The Customer grants Microcare, its agents and employees an irrevocable licence at any time to enter any premises where the Equipment is or may be stored in order to inspect it, or where the Customer's right to possession has terminated, to remove it. All costs incurred by Microcare in repossessing the Equipment shall be borne by the Customer.

10.6 On termination of the Contract for any reason, Microcare's (but not the Customer's) rights in this condition 10 shall remain in effect.

11. SOFTWARE LICENCE

11.1 If the Customer is provided with any operating system software licence regarding the Software the Customer shall sign and return it to Microcare within 7 days of installation of the software, unless the licence has been supplied on a "shrink-wrap" or "click-wrap" basis.

11.2 If no software licence has been provided to the Customer, the Customer hereby accepts a nonexclusive, non-transferable licence to use the Software on the following conditions:

(a) the Customer shall not copy (except as permitted under applicable law or for normal operation of the Equipment), reproduce, adapt, or modify the software, nor communicate it to any third party, without Microcare's prior written consent;

(b) the Customer shall not use the Software on any equipment other than the Equipment, and shall not remove or adapt with any copyright notice or logo which appears in or on the Software;

(c) such licence shall be terminable by either party 28 days' written notice, provided that Microcare terminates only if the continued use or possession of the Software by the Customer infringes the developer's or a third party's rights, or Microcare is compelled to do so by law, or if the Customer has failed to comply with any term of the Contract; and

(d) on or before the expiry of this licence, the Customer shall return to Microcare all copies of the Software in its possession.

12. WARRANTY

12.1 Microcare warrants to the Customer that the Equipment and Services is free from defects of workmanship and materials. Microcare undertakes (subject to the remainder of this condition 12), at its option, to repair or replace Equipment and Services (other than consumables) which is found to be defective as a result of faulty materials or workmanship within 12 months of delivery and installation.

12.2 Microcare shall not be liable for a breach of the warranty contained in condition 12.1 unless:

(a) the Customer gives written notice of the defect to Microcare within 7 days of the time when the Customer discovers or ought to have discovered the defect; and

(b) after receiving the notice, Microcare is given a reasonable opportunity of examining such Equipment and the Customer (if asked to do so by Microcare) returns such Equipment to Microcare's place of business at Microcare's cost for the examination to take place there.

12.3 Microcare shall not be liable for a breach of the warranty in condition 12.1 if:

(a) the Customer makes any use of Equipment in respect of which it has given written notice under condition 12.2(a); or

(b) the defect arises because the Customer failed to follow Microcare's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Equipment or (if there are none) good trade practice; or

(c) the Customer alters or repairs the relevant Equipment without the written consent of Microcare.

12.4 Any repaired or replacement Equipment shall be under warranty for the unexpired portion of the 12 month period.

12.5 Microcare shall not be liable for any damage or defect to the Equipment and Services caused by improper use of the Equipment and Services or use outside its normal application

13. REMEDIES

13.1 Microcare shall not be liable for any non-delivery of Equipment and Services (even if caused by Microcare's negligence) unless the Customer notifies Microcare in writing of the failure to deliver within 2 days after the scheduled delivery date.

13.2 Any liability of Microcare for non-delivery of the Equipment and Services shall be limited to replacing the Equipment and Services within a reasonable time or issuing a credit note at the pro rata contract rate against any invoice raised for such Equipment and Services.

13.3 If Microcare's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer (other than by reason of a Force Majeure Event under condition 16) the Customer shall be liable to

pay to Microcare all reasonable costs, charges or losses sustained by it as a result, subject to Microcare notifying the Customer in writing of any such claim it might have against the Customer in this respect.

13.4 In the event of any claim by the Customer under the warranty given in condition 12.1 the Customer shall notify Microcare in writing of the alleged defect. Microcare shall have the option of testing or inspecting the Equipment at its current location or moving it to Microcare's premises (or those its agent or sub contractor) at the cost of Microcare. If the Customer's claim is subsequently found by Microcare to be outside the scope or duration of the warranty in condition 12 the costs of transportation of the Equipment and Services, investigation and repair shall be borne by the Customer.

14. LIMITATION OF LIABILITY

14.1 The following provisions set out the entire financial liability of Microcare (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

(a) any breach of the Contract; and
(b) any representation, statement or tortious act or omission (including negligence) arising out of or in connection with the Contract.

14.2 All warranties, conditions and other terms implied by statute or common law are excluded from the Contract to the fullest extent permitted by law.

14.3 Nothing in these conditions excludes or limits the liability of Microcare for death or personal injury caused by Microcare's negligence or fraud or fraudulent misrepresentation.

14.4 Subject to condition 14.3:

(a) Microcare shall not be liable for any loss of profits, loss of business, depletion of goodwill or similar losses or pure economic loss or for any special, indirect or consequential loss, costs, damages, charges or expenses howsoever arising; and

(b) Microcare's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Contract shall be limited to the price payable for the Equipment and Services under condition 5.

15. INTELLECTUAL PROPERTY RIGHTS

15.1 The Customer acknowledges that all Intellectual Property Rights used by or subsisting in the Equipment and Services are and shall remain the sole property of Microcare or (as the case may be) third party rights, owner.

15.2 Microcare shall retain the property and copyright in all documents supplied to the Customer in connection with the Contract.

15.3 Microcare's Intellectual Property Rights in and relating to the Equipment and Services shall remain the exclusive property of Microcare, and the Customer shall not at any time make any unauthorised use of such Intellectual Property Rights, nor authorize or permit any of its agents or contractors or any other person to do so.

15.4 In relation to the Software:

(a) the Customer acknowledges that it is buying only the media on which the software is recorded and the accompanying user manuals;

(b) nothing contained in these conditions shall be construed as an assignment of any Intellectual Property Rights in the Software or user manuals; and

(c) the Customer shall be subject to the rights and restrictions imposed by the owner of the Intellectual Property Rights in the Software and user manuals, and shall comply with all licence agreements, terms of use and registration requirements relating to them.

16. CONFIDENTIALITY AND SUPPLIER'S PROPERTY

16.1 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions or processes which are of a confidential nature and have been disclosed to the Customer by Microcare or its agents, and any other confidential information concerning Microcare's business or its products which the Customer may obtain. The Customer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Customer's obligations to Microcare, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Customer.

16.2 All materials, equipment, drawings, specifications and data supplied by Microcare to the Customer shall at all times be and remains the exclusive property of Microcare and shall not be disposed of or used other than in accordance with Microcare's written instructions or authorisation.

16.3 This condition 16 shall survive termination of the Contract, however arising.

17. TERMINATION

17.1 Without prejudice to any other right or remedy available to Microcare, Microcare may terminate the Contract or suspend any further deliveries under the Contract without liability to the Customer and, if the Equipment and Services has been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary if:

- (a) the ability of the Customer to accept delivery of the Equipment and Services is delayed or prevented by circumstances beyond the Customer's reasonable control; or
- (b) an order is made or a resolution is passed for the winding up of the Customer, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the Customer; or
- (c) an order is made for the appointment of an administrator to manage the affairs, business and property of the Customer, or documents are filed with a court for the appointment of an administrator of the Customer, or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
- (d) a receiver is appointed of any of the Customer's assets or undertaking, or if circumstances arise which entitle a court or a creditor to appoint a receiver or manager of the Customer, or if any other person takes possession of or sells the Customer's assets; or
- (e) the Customer makes any arrangement or composition with its creditors, or makes an application to a court for the protection of its creditors in any way, or becomes bankrupt; or
- (f) the Customer ceases, or threatens to cease, to trade; or
- (g) the Customer takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

17.2 Termination of the Contract, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive or implicitly surviving termination.

18. FORCE MAJEURE

Microcare reserves the right to defer the date of delivery, or to cancel the Contract or reduce the amount of Equipment and Services ordered, if it is prevented from or delayed in carrying on its business by acts, events or omissions beyond its reasonable control, including without limitation strikes, lock-outs or other industrial disputes, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default or failure and delays of suppliers or subcontractors, utility companies, telephone companies, internet carriers, telecommunications or other service providers.

19. GENERAL

19.1 A waiver of any right under the Contract is only effective if it is in writing and signed by or on behalf of the waiving party, and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

19.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

19.3 If any provision of this agreement (or part of a provision) is found by any court or administrative body to be invalid, unenforceable or illegal, the other provisions shall remain in force.

19.4 Each of the parties acknowledges and agrees that in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this agreement other than as expressly set out in the Contract.

19.5 The Customer shall not, without the prior written consent of Microcare, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

19.6 Microcare may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

19.7 The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns and is not intended to benefit or be enforceable by anyone else.

19.8 Both parties agree not to directly or indirectly solicit, employ or contract with any employee of the other party who has been associated with a Contract during its term and for one year after its termination or expiry.

19.9 Any notice required to be given pursuant to this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the address of the party as set out in these conditions or such other address as may be notified by one party to the other. A notice delivered by hand is deemed to have been received when delivered (or, if delivery is not in business hours, 9.00 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

19.10 The Contract and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the law of England.

19.11 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract.