

## Terms and Conditions of Supply

### RECTIALS

These Terms and Conditions govern the supply to the Customer of Total Support Training Service/Products.

### OPERATIVE PART

#### 1. INTRODUCTION

1.1 In these terms and conditions the following terms shall, unless the context otherwise requires have the meanings set out below:-

"Contract" means any agreement between Total Support Training and the customer for the supply of products which expressly or by implication incorporate these terms and conditions

"Customer" means the party named in the invoice

"Delivery Address" means the address as the point of delivery as notified by Total Support Training to the customer

"Delivery date" means the delivery date as notified by Total Support Training to the customer

"Hardware" means the hardware components of Total Support Training products including all ancillary equipment, spares, supplies, and related documentation

"Invoice" means the invoice prepared by Total Support Training and issued to the customer

"Licence agreement" means the terms and conditions governing the supply of software, whether Total Support Training own software or third party software which Total Support Training is authorised to supply to the customer

"Price" means the total price for the products as specified in the invoice

"Products" means Total Support Training products including but not limited to any configuration of hardware and/or software. All services offered by Total Support Training, including maintenance and support, training and education, and consultancy services are not products to which these terms and conditions apply, but are supplied on the terms and conditions contained in Total Support Training applicable agreements.

"Total Support Training " means Total Support Training a sole trader registered in England who's head office is at Red Hill House, Hope Street, Chester, CH4 8BU.

"Software" means any operating system, utility or application software supplied by Total Support Training in machine readable object, printed, interpreted or any other form whatsoever and either incorporated with hardware or separately supplied, including related documentation

1.2 This contract constitutes the entire agreement between the parties with regard to the supply to the customer of products. Each party confirms that it has not relied upon any representation nor recorded in this document including it to enter into the contract. No variation of these terms and conditions will be valid unless confirmed in writing by authorised signatories on or after the date of contract.

1.3 If these terms and conditions are incorporated by reference into any other form of agreement between Total Support Training and the customer and that other agreement is currently in effect at the time the contract is made, so that the contract constitutes a contract for the purposes of that agreement, the terms and conditions of the agreement will prevail in the event, but only to the extent, of any conflict of meaning with these terms and conditions

#### 2. PRICE AND PAYMENT

2.1 Applicable taxes, import duties and other duties are not included in the price and will be charged in addition unless agreed otherwise. Value Added Tax will be charged at the appropriate rate at the time of invoice.

2.2 Payment of the price or any part payment thereof and any other charges due under the contract must be made upon receipt of the invoice (unless otherwise specified in the invoice). The contents of the invoice, including inter alia the price shall, in the absence of a manifest error, be deemed to have been accepted by the customer unless the customer has notified Total Support Training in writing within seven days of the date of the invoice that such contents are disputed. Unless otherwise agreed, the payment shall be made in pounds sterling, without set-off, deduction or withholding. All payments which are not received when payable shall be considered overdue and Total Support Training reserves the right to charge interest on a weekly basis at eight percent per week cumulative. A service charge of £70+VAT will become liable in the pursuit of overdue debts.

2.3 Without prejudice to any of Total Support Training other rights if the customer fails to effect any payment due to Total Support Training under the contract in accordance with clause 2.2, Total Support Training shall have the right to terminate or suspend the contract in whole or in part. If Total Support Training elects to exercise its right of suspension under the sub-clause it shall do so by notice in writing to the customer and shall be entitled to recover from the customer all costs which it reasonably incurs as a consequence of such suspension.

#### 3. TITLE

3.1 Title to the products is vested in Total Support Training. Only when the price, all taxes and other charges due under the contract have been paid in full, will title to any hardware supplied under the contract pass to the customer.

3.2 No title or ownership of any software supplied under the contract and licensed to the customer under any licence agreement is transferred to the customer

3.3 Until such time as title in the products passes to the customer, the customer shall hold the products as Total Support Training fiduciary agent and bailee, and shall keep the products separate from the customer and third parties and properly stored, protected and insured and identified as Total Support Training property. Until that time the customer shall be entitled to resell or use the products in the ordinary course of its business but shall account to Total Support Training for the proceeds of sale or otherwise of the products, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the customer and third parties and in the case of tangible proceeds properly stored, protected and insured.

3.4 Until such time as title in the products passes to the customer (and provided the products are still in existence and have not been resold) Total Support Training shall be entitled at any time to require the customer to deliver up the products to Total Support Training and if the customer fails to do so forthwith to enter upon any premises of the customer or any third party where the products are stored and repossess the products.

3.5 The customer shall not be entitled to pledge or in any way charge by way of security or any indebtedness any of the products which remain the property of Total Support Training but if the customer does so all monies owing by the customer to Total Support Training shall (without prejudice to any other right or remedy of Total Support Training ) forthwith become due and payable

#### 4. DELIVERY

4.1 Delivery will be effected at the delivery address.

4.2 If appropriate the customer will make the delivery address available for inspection by appropriate Total Support Training staff at an agreed time during a period of 30 days before the delivery date if so required by Total Support Training.

4.3 If appropriate the customer will furnish the necessary labour (If Total Support Training so requires under Total Support Training direction) for taking any hardware supplied under the contract into its designated operation point, unpacking it and placing it in the desired location.

4.4 Delivery date is approximate only and not of any contractual effect. While Total Support Training will use all reasonable endeavours to meet the delivery date it will not be liable for any loss or damage (including loss of use, loss of contract or loss of profits) incurred by the customer as a result of any failure to deliver on such particular date.

4.5 Each delivery of products under the contract will be deemed to constitute a separate enforceable contract to which these terms and conditions will apply.

4.6 If the customer refuses or fails to take delivery of products tendered in accordance with the contract, delivery will nevertheless be deemed to have taken place for the purpose of Total Support Training rights to payment and Total Support Training will be entitled to store the products at the customers risk and expense, including all transportation charges.

4.7 The customer shall inspect the products on delivery and shall within 48 hours of delivery notify Total Support Training of any alleged shortage in quantity, damage or failure to comply with description or sample. If the customer fails to notify Total Support Training within such time the products shall be conclusively presumed to be in accordance with the contract.

4.8 If the products are not in accordance with the contract the sole remedy of the customer shall be limited to Total Support Training making good any shortage by replacing such products or if Total Support Training shall elect by refunding a proportionate part of the invoice.

#### 5. SUBSTITUTION AND CHANGES

5.1 Total Support Training reserves the right to make improvements, substitutions or modifications to any part of the products at any time prior to delivery, provided that such improvements, substitutions or modifications will not materially affect the performance of such products.

5.2 Total Support Training further reserves the right to change the delivery date and increase the price of the products at any time prior to delivery to reflect any increase in the cost to Total Support Training which is due to any factor beyond Total Support Training control.

5.3 No order that has been accepted by Total Support Training may be cancelled by the customer except with the prior written consent of Total Support Training and the customer shall indemnify Total Support Training in full against all loss (including loss of profit), costs (including cost of all labour and materials used), damages, charges and expenses incurred by Total Support Training as a result of such cancellation.

#### 6. HARDWARE

6.1 Where installation or training is not included in the price and not ordered by the customer, the customer will be solely responsible for this, and Total Support Training disclaims all liability in this connection.

6.2 Where the hardware includes data communications equipment and data transmission speeds are given in relation to any item of hardware, these are at all times subject to any conditions of the applicable telecommunications utility company relating to the use of the relevant data communications hardware at the speeds indicated and the capability of any of that company's equipment to which the hardware is linked.

6.3 Where the hardware is installed or used in conjunction with other products not supplied by Total Support Training, the customer will be solely responsible for ensuring that the products are compatible with such other products, and Total Support Training disclaims all liability in this connection.

6.4 Total Support Training warrants that it has good title to or the legal right to supply all hardware supplied to the customer. Hardware is warranted solely in accordance with any manufacturer's warranty supplied.

6.5 Where any product is to be returned to Total Support Training, the expense, responsibility and risk of delivering the product to Total Support Training shall be borne by the customer. Total Support Training shall assume the expense and responsibility of redelivering the product to the customer. In any case where Total Support Training reasonably determines that the hardware is not defective, the customer will pay Total Support Training all costs of handling, transportation and repairs at Total Support Training then prevailing rate.

6.6 The stated warranties apply only to the customer and not the initial end user of the hardware and are contingent upon proper treatment and use of the products with no unauthorised modifications and maintenance, at a safe and suitable premises.

6.7 The supply of hardware to the customer does not convey any ownership or licence to exploit any of the proprietary rights of Total Support Training in the hardware. Any such rights granted to the customer by Total Support Training will be granted only subject to a separate restrictive, non-transferable, non-exclusive licence agreement supplied by Total Support Training. All operating instructions, manuals and other documentation referencing the hardware and supplied by Total Support Training are subject to copyright and shall not be copied or disclosed to any third party without the prior express written consent of Total Support Training

#### 7. SOFTWARE

7.1 Copyright subsists in all software whether it is Total Support Training proprietary software or software supplied by Total Support Training under licence. All software is supplied to the customer only under the terms and conditions of the applicable licence agreement (whether it has been signed and/or returned to Total Support Training or not). No part of the software may be copied, reproduced or utilised in any form by any means without the prior written consent of Total Support Training.

7.2 It is the sole responsibility of the customer to comply with all of the terms and conditions of any licence agreement, and the customer is hereby notified that any failure to comply with such terms and conditions may result in the revocation of such licence agreement.

7.3 Software is warranted in accordance with the terms of any licence agreement governing its supply

#### 8. LIMITS OF LIABILITY

8.1 Total Support Training will indemnify the customer for direct physical injury or death caused solely either by defects in the products or by negligence of its employees acting within the course of their employment and the scope of their authority.

8.2 Total Support Training will indemnify the customer for direct damage to property caused solely either by defects in the products or by the negligence of its employees acting within the course of their employment and the scope of their authority. The total liability of Total Support Training under this sub-clause will be limited to £250,000 for any one event or series of connected events.

8.3 Except as expressly stated in this clause and elsewhere in these terms and conditions any liability of Total Support Training for breach of contract will not exceed, in the aggregate of damages, costs, fees and expenses capable of being awarded to the customer, the price.

8.4 Except as expressly stated in these terms and conditions Total Support Training disclaims all liability to the customer in connection with Total Support Training performance of this contract or the customers use of the products and in no event will Total Support Training be liable to the customer for special, indirect or consequential damages including but not limited to loss of profits or arising from loss of data or unfitness for use purposes.

#### 9. EXPORT AND RE-EXPORT LIMITATION

9.1 Notwithstanding any other provision hereunder some or all of the products may be delivered subject to Total Support Training or its suppliers obtaining the required export licence or other authorisation from the United Kingdom Government. Regardless of any disclosure made by the customer to Total Support Training of any ultimate destination of any products, the customer hereby agrees not to re-export, transmit, transfer or engage in or permit oral exchanges or visual inspections of, whether directly or indirectly, any of the products to any other party without first obtaining the required export licence or other authorisation from the United States Department of Commerce or other agency or department of the United Kingdom Government or from the United Kingdom Government.

#### 10. CONFIDENTIALITY

10.1 Each party shall treat as confidential all information obtained from the other pursuant to the contract and shall not divulge such information to any person (except to such party's own employees and then only to those employees who need to know the same) without the other party's prior written consent provided that this clause shall not extend to negotiations leading to the contract, which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this clause). Each party shall ensure that its employees are aware of and comply with the provisions of this clause. If Total Support Training shall appoint any sub-contractor then it may disclose confidential information to such sub-contractor subject to such sub-contractor giving Total Support Training an undertaking in similar terms to the provisions of this clause. The foregoing obligations as to confidentiality shall survive any termination of contract.

#### 11. FORCE MAJEURE

11.1 Total Support Training shall not be liable for failure to perform its obligations in the event such performance is prevented or hindered by reasons of force majeure. Force majeure shall be deemed to mean all causes beyond the reasonable control of Total Support Training (including without prejudice to the generality of the foregoing any delays arising from the act, omission, or default of any of Total Support Training suppliers or sub-contractors), fires or industrial disputes.

#### 12. TELECOMMUNICATIONS REQUIREMENTS

12.1 When computer equipment is connected to a public network, ie a switchboard or telephone network, certain regulations of the telecommunications provider apply. It is the sole responsibility of the customer to ensure compliance with all such regulations

#### 13. LIFE ENDANGERING APPLICATIONS

13.1 The products are designed for standard commercial use and are not intended to be installed or used in hazardous or life-threatening environments or for potentially life-threatening applications, including but not limited to environments or applications involving safety critical systems in the nuclear industry or the control of aircraft in the air. The customer undertakes not to use or supply the products for any of these purposes and agrees to indemnify and hold Total Support Training harmless from and against all liabilities and related costs arising out of the use of any of the products for any of these purposes.

#### 14. ASSIGNMENT

14.1 The customer shall not assign its rights or obligations under the contract except with the prior written consent of Total Support Training.

#### 15. WAIVER

15.1 Failure by either party any time to enforce any of the provisions of the contract shall not be construed as a waiver by that party of any such provisions nor in any way affect the validity of the contract.

#### 16. SEVERABILITY

16.1 In the event that any or any part of the contract shall be determined invalid, unlawful or unenforceable to any extent, such term, condition or provision shall be severable from the remaining terms, conditions and provisions which shall continue to be valid and enforceable to the fullest extent permitted by law.

#### 17. LAW AND JURISDICTION

17.1 The contract shall be subject to and interpreted in accordance with English law and the parties hereby irrevocably submit to the exclusive jurisdiction of the English Courts in all matters arising out of the contract.

#### 18. NOTICES

18.1 Any notice to be served by either party pursuant to the contract is to be sent by registered mail to that other party's address as specified in the invoice.

#### 19. Broadband services

19.1 Broadband contracts are subject to a minimum 12 month period. Cancellation by the customer within the initial twelve month period will be subject to a cancellation fee of £45+VAT. Thereafter 30 days written notice is required to terminate the contract.

19.2 Broadband services limited to usage allowances are subject to additional charge when the customer exceeds the specified limit. The customer will be charged at the rate of £2.50+VAT for each gigabyte, or part thereof, that exceeds the usage limit.