

QBS Software Ltd /va GNR Technology Sale Terms & Conditions

1 DEFINITIONS AND EFFECT OF CONDITIONS

- (a) The Company means QBS Software Ltd /va GNR Technology .
- (b) These Conditions shall apply to and be incorporated into every agreement between QBS Software Ltd /va GNR Technology and any person, firm or company ("the Customer") under which the Company supplies goods or services at the request of the Customer.
- (c) These Conditions shall take precedence over any conditions of the Customer.
- (d) References to "goods" include the supply of any services to be supplied by the Company to the Customer.
- (e) "Agreement" means the agreement between the Company and the Customer for the sale of goods and/or the supply of services in accordance with these Conditions
- (f) "Business Day" means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
- (g) "Conditions" means these terms and conditions as amended from time to time in accordance with clause 26.

2 DELIVERY

- (a) Any delivery dates quoted whether verbally or otherwise are estimates only and in regard to any such date time shall not be of the essence.
- (b) Delivery of the goods to the customer's address or any other place stipulated by him shall constitute delivery and the risk therein shall pass upon such delivery to the customer.
- (c) The Company shall be entitled to make partial deliveries by instalments and these conditions shall apply to each partial delivery.

3 FRUSTRATION etc. (Force Majeure)

The Company will not be deemed to be in breach of any of its obligations under the agreement or otherwise be liable to the Customer due to any delay in performing or any failure to perform any such obligations by reason of any cause or event beyond the Company's control (including without limitation breakdown of plant or machinery, strike or industrial dispute, shortage of materials or failure of or delay in receiving supplies, act of war (whether declared or not), Act of God, or any law regulation of any government or any local or municipal authority, if any such event continues for more than 28 days the Company may terminate the agreement forthwith by written notice to the Customer without prejudice to the accrued rights of either party.

4 PRICE

- (a) Unless otherwise stated any prices quoted by the Company are exclusive of value added tax and any other taxes
- (ii) exclusive of carriage, packing and insurance. (Back orders will incur additional carriage charges).
- (iii) exclusive of any release certificates and the Company shall charge extra in respect of the above items.
- (b) Prices quoted are those current at the time of quotation and the price payable by the Customer shall be that which is current at the time of despatch and the Company reserves the right to amend its quoted prices at any time prior to despatch.

- (c) Where agreed call offs are not adhered to by the Buyer, the Company reserves the right to amend the price structure in accordance with the quantities delivered.

5 PAYMENT

- (a) The price is payable on demand but in any case must not be paid later than 30 days from date of invoice.
- (b) Time for payment shall be of the essence of the Agreement
- (c) The Company reserve the right to suspend deliveries where payment is not received in accordance with paragraph (a) of this clause or in accordance with any alternative items of payment agreed in writing.
- (d) Where payment is not made in accordance with the terms of paragraph 5(a) hereof the Customer shall pay interest on any unpaid amounts calculated at the rate prevailing at the due date for payment as prescribed by the Secretary of State pursuant to section 6 of The Late Payment of Commercial Debts (Interest) Act 1998, calculated on a daily basis from the due date for payment until payment.
- (e) No cash or other discount is allowed unless agreed in writing.
- (f) If the Company is able to deliver some items comprising the goods the subject of an agreement but unable to deliver all such items due to cause beyond its control (including but not limited to the examples referred to in Condition 3 hereof) the Customer shall pay for such items as are delivered.
- (g) The Customer shall pay all amounts due under the Agreement in full without any set-off, counterclaim, deduction or withholding except as required by law. The Company may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Company to the Customer.

6 TELEPHONED ORDERS

The Customer agrees to send to the Company a written order in confirmation of any telephoned orders duly marked with any confirmation reference given by the Company otherwise the Company cannot accept liability for any duplication of delivery that may occur.

7 CUSTOMER OBLIGATIONS

- The Customer shall:
- a) ensure the terms of the order are complete and accurate;
 - b) co-operate with the Company in all matters relating to the goods or services;
 - c) provide the Company with such information and materials as the Company may reasonably require to deliver the goods and/or provide the services, and ensure that such information is accurate in all material respects.

8 TITLE OF GOODS

- (a) Even though the goods may have been delivered and the Customer may be responsible for any loss or destruction of or damage to the goods and not withstanding any other provision of these Conditions, the legal and beneficial ownership of the goods will remain with the Company until the Company has received payment in full of :-
- (i) all sums payable to the Company in relation to the agreement, and

- (ii) all other sums due from the Customer to the Company when, the sums referred to in (i) are paid, in respect of the supply of any other goods or services.

- (b) Until the Customer becomes the owner of the goods in accordance with 7(a) the Customer shall :-

- (i) hold the goods as fiduciary agent and bailee for the Company who 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 any other item) and, if it fails to do so immediately enter the premises where the goods may be situated with its representatives and appropriate transport and repossess the goods;
- (ii) not, except in accordance with condition 8(c), sell, part with possession of, use or do anything else inconsistent with the Company's ownership of any the goods and will ensure that they are not affixed to any land or building, are kept separate from any other item, properly stored and protected and clearly identified as the Company's property, and are insured to their full replacement value against all normal comprehensive risks.

- (c) Until ownership of the goods passes to the Customer provided that it complies with the agreement the Customer may sell the goods in the ordinary course of its full market value.
- (d) After the Company has repossessed any goods it may sell them and the proceeds of sale will belong to the Company absolutely and the Customer will have no right or interest in those proceeds. If the net proceeds received by the Company are less than the amount payable to it in relation to the agreement it may recover the balance from the Customer.
- (e) The Customer will become responsible for any loss or destruction of or damage to any goods on their delivery
- (f) 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 agreement.
- (g) Even if ownership of the goods has not passed to the Customer the Company may recover all sums payable to it in relation to the agreement.

9 DRAWINGS etc

All drawings, descriptive weights, dimensions and the descriptions and illustrations contained in the sales literature and price lists are approximate only and not form part of this Agreement. In addition, drawings, technical documents issued either before or after the conclusion of this Agreement for the use or information of the Customer and such other information as maybe supplied to the Customer including specifications shall not be copied, reproduced or communicated by any third party without the Company's prior written consent.

10 LOSS OR DAMAGE IN TRANSIT

- (a) The Company will not be responsible for damage to any of the goods or loss of the goods or part thereof in transit or for any discrepancy between the goods delivered and the contracted goods to the Company unless the Customer gives written notice of a claim to the Company and to the carrier (as appropriate).
- (i) in the case of damage or discrepancy within 3 days after having received the goods and
- (ii) in the case of loss or shortage within 3 days of the date of delivery of the other goods under the relevant consignment.
- (b) If applicable the Customer will be asked to complete and submit the Company's Discrepancy Log form, from which an investigation into the alleged loss, discrepancy or damage will be undertaken. The Customer

will also be asked to sign a copy of the Company's carrier's delivery manifest as acknowledgement of receipt of goods. The Customer should inspect the goods carefully as an unqualified signature shall be deemed to signify the Customer's acceptance that the goods are in good condition.

11 GUARANTEE

(a) If within 12 calendar months of their being delivered any defect in the goods is discovered which is directly due to faulty materials or workmanship, or if a valid claim is made by the Customer under Condition 10(a)(i) hereof, the Company will at its option remedy the defect or damage by replacement or repair or give a credit note to the Customer to be utilised firstly against existing indebtedness and then future purchases within two months of the credit note date.

(b) The guarantee will be subject to the following conditions:-

(i) It will not apply to defect or damage resulting from any alteration or modification to the goods without the Company's prior written consent, incorrect storage, normal wear and tear, overloading, misuse, abnormal conditions of use, incorrect installation by anyone other than the Company, maintenance or repair not carried out by the Company, use which is not in accordance with the Company's or the manufacturer's instructions, any act or omission of the Customer or any third party or any fault in any other goods or equipment.

(ii) The Customer must complete and submit the Company's Returns Material Authorisation form in relation to any such defect or damage. If it appears to the Company from the information submitted on the RMA form that such defect or damage is covered by the guarantee then a RMA number will be issued confirming the goods in question may be returned, subject to verification by the Company after inspection of the goods. RMA numbers issued by the Company are valid for 10 days from the date of issue. After this period the RMA log is closed and a new RMA number must be obtained.

(iii) Allegedly defective or damaged goods must be returned to the Company carriage paid at its address stated overhead, together with their original packaging and all related manuals and accessories. Please ensure that the goods/parcels in question are both packaged in the appropriate fashion and clearly labelled with the relevant RMA number. Failure to do so may result in the products/parcels being refused at our Warehouse.

(iv) If the Customer makes any claim in relation to any goods falling outside the terms of the guarantee the Company may charge the Customer, please refer to GNR's Return Authorisation Form for the current charges relating to inspection and NFF fees information. The Customer must collect any returned goods within 5 days of notification that they are not covered by the guarantee or on written instructions from the Customer, GNR will dispose of the goods. Failure to do so will result in the Customer having to pay storage charges of £2.00 plus VAT per unit for each day or part of a day from the end of that period until collection.

(v) The guarantee will apply to goods replaced or repaired under the guarantee for the balance of the original guarantee period.

(vi) Unless the Company otherwise decides, a credit note for use in accordance with clause 11 a will only be given if the Customer notifies the Company of the alleged defect, damage or discrepancy within 3 days of the Customer's receipt of the goods.

12 EXCLUSION OF LIABILITY

(a) The guarantee in condition 11 will be in substitution for all other terms, warranties and conditions, express, or implied, statutory or otherwise in relation to the goods (except for the Company's title to them) which are hereby excluded to the fullest extent permitted by law.

(b)

b) Nothing in these Conditions shall limit or exclude the Company's liability for:

i) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

ii) fraud or fraudulent misrepresentation;

iii) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982;

iv) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or

v) defective products under the Consumer Protection Act 1987.

c) Subject to clause 12(b):

i. the Company shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with this agreement;

ii. The Company's total liability to the Customer in respect of all other losses arising under or in connection with this agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the net invoice value of the goods.

d) The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.

e) This clause 12 shall survive termination of the Agreement.

13 RETURNED GOODS AND CANCELLATIONS

The Customer shall not return any goods (except in accordance with Condition 11) or cancel any orders without the Company's previous written consent. Such consent will not be given where goods have been specially purchased by the Company to meet the Customer's requirements. If the Company in its discretion gives consent, it reserves the right to make a cancellation charge of 25% (or such higher percentage as may be notified to the Customer before or when such consent is given by the Company) of the contract price of the goods concerned plus VAT.

14 COPYRIGHT, PATENTS, TRADE MARKS AND INTELLECTUAL PROPERTY RIGHTS.

(a) The Customer acknowledges that rights in respect of trade marks, trade names, copyrights, patents and other intellectual property rights connected with the goods do not pass to the Customer.

(b) The Customer agrees to indemnify the Company against all liabilities, costs and expenses which the Company may incur as a result of work done in accordance with the Customer's specifications which involve infringement of any patent or other proprietary right.

15 SUBCONTRACTING

The Company reserves the right to sub-contract any part of any work or supply of any goods or services.

16 CONSTRUCTION AND USE

The Company shall not be responsible for adapting or modifying any goods to conform to statutory requirements not current at the time of the acceptance or order.

17 HEADING

The headings of these conditions are for convenience only and shall have no effect on the interpretation thereof.

18 TERMINATION

The Company shall be entitled by notice in writing to terminate any agreement without prejudice to any claim or right the Company may otherwise make or exercise where,

(a) the Customer is in breach of any term, condition or provision of this agreement or required by law,

(b) the Customer shall go into liquidation (except for the purpose of reconstruction) or if any petition or resolution to wind up the Customer shall be presented or if a receiver is appointed of the Customer's undertaking property of assets or if a distress shall be levied upon any of the Customer's property or if the Customer shall commit any act of bankruptcy.

19 ASSIGNMENT AND OTHER DEALINGS

(a) The Company may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Agreement and may subcontract or delegate in any manner any or all of its obligations under the Agreement to any third party;

(b) The Customer shall not, without the prior written consent of the Company, assign, transfer, change, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Agreement.

20 NOTICES

(a) Any notice or other communication given to a party under or in connection with the Agreement shall be in writing, addressed to that party at its registered office or such other place as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier.

(b) A notice or other communication shall be deemed to have been received, if delivered personally, when left at the address referred to in clause 21(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

(c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

21 SEVERANCE

(a) If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such

modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Agreement.

b) If any provision or part-provision of the Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

22 WAIVER

A waiver of any right under the Agreement or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Agreement or by law shall constitute a waiver of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

23 NO PARTNERSHIP OR AGENCY

Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent or another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

24 THIRD PARTIES

A person who is not a party to the Agreement shall not have any rights to enforce them.

25 VARIATION

Except as set out in these Conditions, no variation of the Agreement shall be effective unless it is agreed in writing and signed by a Director of the Company.

26 JURISDICTION

The agreement shall be governed by any construed in accordance with English Law and the Courts of England shall have jurisdiction to hear all disputes arising in connection with the agreement.