

LITHIUM SYSTEMS LTD – TERMS AND CONDITIONS OF SALE

1. INTERPRETATION

1.1 In this Agreement "Lithium" means Lithium Systems Ltd.; "Customer" means the person placing an order; "Charges" means the sum payable by the Customer for the Deliverables; "Commissioning" means the testing, configuration, installation and other technical services required to prepare the Equipment to the specification requested in the Order and excludes Remedial Work; "Confidential Information" means any trade secrets or confidential or proprietary information of either party, including this Agreement but excluding any information (a) in the public domain otherwise than by a breach of this Agreement; (b) which, when disclosed, was already known to the recipient; (c) that the other party develops independently of or to any information that is disclosed to it under the provisions of this Agreement; or (d) which is subsequently disclosed to the recipient by a third party at liberty to disclose it; "Deliverable" means any hardware, third-party software and/or related technical services to be supplied by or on behalf of Lithium, including any Equipment; "Equipment" means computer hardware and third-party software included in the Deliverables; "Order" means a written request for the supply of the Deliverables, including the acceptance of a Lithium quotation, an instruction to proceed or any other confirmation from the Customer; "Personnel" means any director, employee, agent or sub-contractor, and "Remedial Work" means work undertaken by Lithium after completion of Commissioning to remedy faults (if any) identified in the operation of the Deliverables.

1.2 In this Agreement (a) the headings are for convenience only and shall not affect its construction or interpretation; (b) "including" shall be understood to mean "including without limitation" and "includes" shall be understood to mean "includes without limitation", and (c) words of a technical nature shall be construed in accordance with general trade usage in the computer industry in Scotland.

2. DELIVERY AND ACCEPTANCE

2.1 Any time for delivery is an estimate only. Lithium shall not be liable for any loss or damage sustained by the Customer as a consequence of Lithium's failure to deliver by such date.

2.2 If Lithium agrees to install the Equipment the Customer shall, in accordance with Lithium's instructions; (a) prepare its premises prior to delivery; (b) provide any services, including power and communications lines; (c) assist Lithium to unpack and place the Equipment on the premises; and (d) provide Lithium with reasonable access to the Equipment.

2.3 Delivery ("Delivery") occurs:

2.3.1 On the date the equipment is delivered to the customer's site

2.3.2 Where Commissioning is scheduled to continue for five working days or more, on the date the Equipment is delivered to the Customer's or Lithium's premises for the purposes of Commissioning.

2.4 Acceptance ("Acceptance") occurs:

2.4.1 If no Commissioning is required on delivery;

2.4.2 on completion of Commissioning;

2.4.3 If Commissioning is scheduled to continue for five or more working days; (a) for the Equipment, on Delivery; and (b) for all other Deliverables on completion of the Commissioning.

2.4.4 If Commissioning is required but Lithium's access to the Equipment is prevented by the Customer for more than five working days, five working days after delivery.

If the Customer notifies Lithium in writing of a bona fide dispute Acceptance shall still be deemed to occur in accordance with this clause and the retention clause (4.5 below) shall apply until completion of Remedial Work. For the avoidance of doubt, Commissioning and the performance of Remedial Work (if any) are distinct operations, and Commissioning will normally be completed before Remedial Work begins.

2.5 Title to any Deliverable (or any part) will pass to the Customer on receipt of cleared funds by Lithium in respect of any Deliverable (or any part). Risk in any Deliverable will pass on acceptance.

2.6 Until title to any Deliverable (or any part) has passed to the Customer, the Customer shall: (a) hold any such Deliverable on behalf of Lithium; (b) so far as reasonably practicable, keep any such Deliverable stored separately from any other products and identified as the property otherwise under the control of Lithium; (c) keep any such Deliverable insured against all risks for the full reinstatement value of any such Deliverable; and (d) return to Lithium on demand any such Deliverable.

2.7 The terms of any relevant software licence shall apply to any software supplied as a Deliverable. Where there is a conflict between these terms and the software licence, the software licence shall take priority.

2.8 Lithium may arrange storage for any Equipment at the Customer's risk and expense if Lithium has not received the Customer's delivery instructions within twenty-one days of Lithium's notice that the Equipment is ready for delivery.

2.9 The Customer shall be deemed to have accepted the Equipment from the date of Lithium's notice that it has arranged storage under clause 2.8 and may not cancel the order or any part thereafter.

2.10 Where Lithium is required to stage the delivery of any Equipment over a period of more than 30 days the Charges shall become irrevocably due from the date of the first delivery.

3. CANCELLATION OR DELAY

3.1 If the Customer; (a) cancels the order (or any part) for any reason, including failure to comply with its contractual obligations or to maintain a satisfactory credit relationship; or (b) requests or causes a delay in the date of delivery and Lithium cannot reasonably reallocate its resource, the Customer shall pay to Lithium a cancellation or delay charge as follows:

Cancellation or Delay	Charge
61-90 days prior to month of delivery	5% of Charges or £100
31-60 days prior to month of delivery	10% of Charges or £100
30 days or less prior to month of delivery	25% of Charges or £100
During month of delivery	50% of Charges or £100

4. PRICE AND PAYMENT

4.1 Lithium will only guarantee prices to the customer provided they are within the valid time limit specified within the estimate.

4.2 Lithium's policy is one of on-going update and revision. In the event that for any reason Lithium is unable to supply the Equipment specified in the Order, Lithium will endeavour to supply replacement Equipment that has the functionality and performance of the Equipment ordered, but changes between the Order and what is delivered in a specification sheet is possible. Parts used in repairing or servicing the Equipment may be new, equivalent-to-new, or reconditioned.

4.3 Unless otherwise stated, the Charges will be shown exclusive of VAT, which will be added at the prevailing rate. Delivery and freight charges will be specified separately where applicable.

4.4 Lithium may, at its sole discretion establish a credit account for the Customer, in which case payment for any Deliverable is due to Lithium on the later of (a) 30 days after Delivery, or (b) Acceptance (as defined in clause 2 above), without any set off, reduction or the withholding of any sum for any other reason. If a credit account is not made available to the Customer, payment is prior to Delivery. Means of payment will normally be by Direct Debit but will be at the discretion of Lithium and the customer may be required to sign a Direct debit mandate prior to any transaction.

4.5 Lithium may require payment of the Charges for the parts of the Deliverables separately, in accordance with the provisions of clause 2.4.3 above, notwithstanding that such Charges may be submitted on the same invoice.

4.6 Where Lithium agrees to undertake Remedial Work then the customer shall be entitled to retain a sum of a value of no more than 10% of the value of the Deliverables other than Equipment (the "Retention") until such time as the Remedial Work is completed. Subject to the deduction of the Retention, any other delay in payment beyond the dates defined in clauses 4.4 and 4.5 above will be subject to clauses 4.7 and 4.8 below.

4.7 If any payment is overdue, Lithium may charge the Customer interest in respect of any amount overdue at the rate of 2.5% per annum over Clydesdale Bank plc base rate from time to time from the due date until the date of payment. Any such interest shall accrue on a daily basis.

4.8 If any payment is overdue, Lithium may, at its sole discretion, determine any unfulfilled Orders, without prejudice to any claim or right Lithium might otherwise have.

5. WARRANTY AND RETURNS POLICY

5.1 Unless otherwise agreed in writing the Equipment is sold with the benefit of the manufacturer's warranty as is stated in the applicable manufacturer's terms and conditions.

5.2 If Lithium agrees to accept Equipment returned as a condition of the manufacturer's warranty, the Customer must: (a) request a Returns Authorisation Number from Lithium within 14 days of the fault arising; (b) on receipt of a Returns Authorisation Number only, ship the Equipment to Lithium's depot, transportation prepaid with the Returns Authorisation Number clearly marked on the outside of the packaging; and (c) include a written description of the claimed defects.

5.3 If Lithium determines that any Equipment returned under warranty is not defective as defined in the applicable manufacturer's warranty, the Customer shall pay Lithium all costs of handling, diagnosis and transportation.

5.4 Any Equipment replaced by Lithium under this clause 5 shall become the property of Lithium.

5.5 The warranty given under this clause 5 does not apply to Equipment or components which have been: (a) altered, treated, processed or worked upon while in the Customer's possession, custody or control other than in the ordinary course of installation in accordance with the installation manual; or (b) operated other than in accordance with the recommendations of Lithium or the manufacturer.

5.6 Lithium warrants that professional and technical services included in the Deliverables will be provided with reasonable care and skill.

5.7 Lithium does not warrant that the Deliverables will meet the Customer's requirements, or that the operation of the Equipment will be uninterrupted or error free. No oral or written communications by or on behalf of Lithium shall create a warranty or in any way increase the scope of the warranties given by Lithium.

5.8 Third Party Software supplied by Lithium will be subject to the Third Party Software owner's standard licensing terms accompanying such software which in the event of conflict shall prevail over this

LITHIUM SYSTEMS LTD – TERMS AND CONDITIONS OF SALE

Agreement in relation to the Third Party Software. Lithium gives no warranty in relation to the Third Party Software. Lithium's sole liability in relation to the Third Party Software shall be to use all reasonable endeavours to enforce, at the Customer's expense, Lithium's rights (if any) against the third party owner, as the Customer shall reasonably require.

6. CONFIDENTIALITY

- 6.1 Except as expressly provided in these terms and subject to clause 6.3, neither party may use or disclose the other party's confidential information.
- 6.2 Without limiting the generality of clause 6.1 either party may use the other's confidential information solely in the performance of its obligations or rights provided under these terms.
- 6.3 Either party ("Recipient") may disclose the confidential information of the other ("Disclosing Party"):
- 6.3.1 When required to do so by law or any regulatory authority, provided that where practicable and lawful, the Recipient: (a) promptly notifies the Disclosing Party of such a requirement; and (b) co-operates with the Disclosing Party regarding the manner, scope or timing of such disclosure or any action that the Disclosing Party may take to challenge the validity of any such requirement.
- 6.3.2 To its Personnel or any other person whose duties reasonably require such disclosure, on condition that the recipient ensures that each such person to whom such disclosure is made: (a) is informed of the obligations of confidentiality under this Agreement; and (b) complies with those obligations as if they were bound by them.

7. LIMITATION OF LIABILITY

- 7.1 Nothing in this Agreement shall exclude or limit either party's liability for: (a) fraud or fraudulent misrepresentation on the part of such party or its Personnel; (b) personal injury or death caused by the negligence or such party or its Personnel; or (c) any warranty as to title or quiet possession implied by statute.
- 7.2 Lithium's entire liability in respect of the supply of the Deliverables, or any part, (whether for breach of contract, in negligence or under statute or otherwise at all) shall be limited at Lithium's option, to (a) re-supplying the Deliverables; (b) paying the cost of having the Deliverables re-supplied; or (c) repaying any Charges actually received by Lithium in respect of the Deliverables, or any part.
- 7.3 The liability of either party in respect of loss or damage to tangible property of the other party caused by its negligence or willful act or omission shall not exceed one million pounds (£1,000,000).
- 7.4 The liability of either party in respect of any claim shall be limited to the extent that its aggregate liability in respect of all causes of action arising out of or in connection with this Agreement or its subject matter (whether for breach of contract, in negligence or under statute or otherwise at all) shall not exceed an amount of: (a) the Charges due to Lithium from the Customer during any twelve (12) Month period considered retrospectively from the date any cause arose.
- 7.5 Neither party shall be liable for any claim arising under this Agreement unless it has received written notice of the claim within six months of the other party becoming aware of the circumstances giving rise to the claim or, if earlier, six months from the time the other party ought reasonably to have become aware of such circumstances.
- 7.6 Neither party shall be liable to the other for: (a) any indirect or consequential loss or damage at all; or (b) any loss of business, capital profit, anticipated savings, reputation of goodwill, arising out of or in connection with this Agreement or its subject matter.
- 7.7 Without prejudice to clause 7.1 to 7.6 (inclusive), Lithium shall not be liable to the Customer (whether for breach of contract, in negligence or under statute or otherwise) for any loss or corruption of data arising out of the Customer's failure to maintain adequate back-up copies of any such data, having regard to the nature of the data and the risk and expense to be incurred arising out of the loss or corruption of any such data.

8. TERM AND TERMINATION

- 8.1 Either party ("Terminating Party") may terminate this Agreement immediately by written notice if:
- 8.1.1 The other commits any material breach of this Agreement which, if capable of remedy, is not remedied within 14 days of the Terminating party providing the other with written notice specifying the breach and requiring its remedy: or
- 8.1.2 If a resolution is passed or a petition presented or an order is made for winding up of the other (save for the purpose of a bona fide reconstruction or amalgamation) or if an application is made for the appointment of an administrator of the other the other becomes subject to an administration order, or a receiver or administrative receiver is appointed over the other's property or assets, or the other is insolvent or apparently insolvent, or the other is dissolved, or otherwise threatens or ceases to carry on business
- 8.2 On termination of this Agreement for any reason each party shall: (a) return or delete any of the other's Confidential Information; and (b) provide the other with a written notice, signed and completed by its duly authorised representative, to certify compliance with sub-clause 8.2(a).

9. GENERAL

- 9.1 Act of God: neither party shall be liable to the other for any delay in, or failure of, the performance of its obligations under this Agreement arising from any cause beyond its reasonable control.
- 9.2 Whole Agreement: This Agreement sets out the entire agreement and understanding between the parties in connection with its subject matter. In particular, the Customer acknowledges that this Order supersedes the terms and conditions of any offer it has made and that this Order is capable of acceptance by the fulfilment of this order (or any part), provided that nothing in this order shall affect the liability of either party in respect of any misrepresentation, warranty or condition that it makes fraudulently.
- 9.3 Data Protection: Each party shall ensure that in the performance of its obligations under this Agreement it will at all times comply with the Data Protection Act 1998.
- 9.4 Waiver: Failure by either party to exercise or enforce any rights, or the giving of any forbearance, delay or indulgence, will not be construed as a waiver of its rights under this Agreement or otherwise.
- 9.5 Notices: Notices under this Agreement shall be in writing and sent by first class recorded delivery mail to the other party's address appearing on this Agreement.
- 9.7 Survival: The provisions of clauses 3.1, 4.7, 6, 7, 9.2, 9.4, 9.8, 9.9 and 9.10 shall survive termination of this Agreement for any reason.
- 9.8 Severance: If any provision of this Agreement is or becomes invalid or unenforceable it will be severed from this Agreement so that it is effective to the extent that if invalid or unenforceable and no other provision of this Agreement shall be rendered invalid unenforceable or be otherwise affected.
- 9.9 Third Party Rights: Nothing in this Agreement shall confer on any third party any right or benefit.
- 9.10 Jurisdiction: This Agreement shall be governed by and construed in accordance with Scots Law and the parties' prorogate the jurisdiction of Alloa Sheriff Court.