

# Terms and Conditions

## 1. Definitions

The Following words shall have the following meanings:

- 1.1 "Agreement" means the physical Order Form (and/or a request for services via an equivalent online method approved by the Company), the Conditions and the SLA.
- 1.2 "Company" means Hardacre IT Ltd t/a WRS Systems (Company Registration Number 04637875) whose registered office is situated at Systems House, 50 The Mall, Carisbrooke Road, Newport, Isle of Wight, PO30 1BW.
- 1.3 "Company's Network" means the network owned and operated by the Company for the purpose of connecting with the Customer through the internet.
- 1.4 "Conditions" means these terms and conditions
- 1.5 "Contract" means the Customers order and the Suppliers acceptance of it in accordance with these conditions
- 1.6 "Customer" means any person or organisation with whom the Company enters into an Agreement as detailed on the Order Form.
- 1.7 "Hardware" means the Hardware ordered under the Agreement and Contract to be purchased by the Customer from the Company (including without limitation any part or parts of it)
- 1.8 "Internet" means the global data network comprising interconnected networks to which the Company is connected and provides access to its Customers;
- 1.9 "Operating Manuals" means operating manuals, specifications and other manufacture documents relating to the Hardware;
- 1.10 "Order Form" means the Company's standard Order Form signed by the Customer relating to the Hardware/Software/Services to be provided by the Company to the Customer;
- 1.11 "Parties" means the Customer and the Company.
- 1.12 "Password" means the alphanumeric characters chosen and used exclusively by the Customer or the Company at its own risk for the purpose of securing and maintaining the exclusivity of its access to the Company's Services;
- 1.13 "Services" means the Service described in the current Company literature together with such Value Added Services to be provided by the Company to the Customer but excluding all or any representations made by the Company's distributor which will not form part of the Agreement;
- 1.14 "Software" means any operating system installed on Hardware by the Company as per the Agreement
- 1.15 "Service Commencement Date" means the date identified as the target delivery date on the Order Form;
- 1.16 "SLA" means the Service Level Agreement of the Company to be agreed to and signed by the Customer;
- 1.17 "Specifications" means a detailed written specification of the Hardware/Software/Services to be provided to the Customer under the Agreement;

## 2. Acceptance of Agreement

- 2.1 The Company reserves the right to refuse to enter into any Agreement for the Hardware/Software/Services but if accepted by the Company the Hardware/Software/Services shall not be unreasonably withheld without proper justification.
- 2.2 The Customer acknowledges that the Conditions prevail over any of the Customers own standard terms and conditions whether set out on the Customer's own standard order for or otherwise.
- 2.3 In the event of any conflict between the Conditions and the Agreement for the Hardware/Software/Services then the Conditions shall prevail.
- 2.4 The Conditions shall apply to and be incorporated in any Agreement between the Company and a Finance Company and to the connected agreement between the Customer and Finance Company, to the extent necessary in order that the Company's obligations and rights are not materially and adversely changed.
- 2.5 No additions to, variation of, exclusion or attempted exclusion of any terms of the Contract shall be binding on the Company unless in writing and signed by a duly authorised representative of the Company.

## 3. Basis of Sales Orders

- 3.1 Any quotation from the Company is valid for a period of 30 days only and the Company may withdraw a quotation at any time by notice to the Customer.
  - 3.2 Any Order/Agreement/SLA or acceptance of a quotation for Hardware/Software/Services by the Customer shall be deemed to be an acceptance by the Customer subject to these conditions. The Customer shall ensure that the order is complete and accurate.
  - 3.3 Contracts become binding on receipt by the Company of the Customer's signed quotation confirming acceptance of the Agreement and/or a deposit payment to secure order.
- ## 4. Hardware, Software and Service
- 4.1 The Company shall provide the Hardware/Software/Services to the Customers having regard to the provisions of the SLA.
  - 4.2 The Parties shall produce and agree the Specifications
  - 4.3 The Parties each agree to dedicate the necessary resources and use all reasonable commercial efforts to meet their respective deadlines set forth in the Specifications. Any delay or adjustment in the Specifications caused by the Customer's delay shall be the responsibility of the Customer and the Customer will pay the Company for all costs incurred for wasted time and/or for the rescheduling of booked resources at the Company's standard daily rate plus expenses.
  - 4.4 In relation to the performance dates, the number of Chargeable days estimated to be required to complete the Services as detailed in the Order Form shall be reviewed following finalisation of the Specifications and is based upon the following assumptions (known as "the Assumptions"):
    - (a) The scope of the tasks performed by the Company will not exceed those stated in the Specification;
    - (b) The Customer will perform and complete the Customer's assigned tasks required by the Specifications in a timely manner;
    - (c) The Customer will not suspend or delay the project in any manner without prior authorisation by the Company which shall not be unreasonably withheld;
    - (d) The Services are performed during normal working hours those being Monday to Friday 9:00am to 5:00pm except as otherwise agreed in writing between the Parties; and
    - (e) The Specification cannot be amended once it has been agreed.
  - 4.5 Without prejudice to the Variation Clause, changes can only be effected in accordance with the following change control mechanism;
    - (a) Either the Company may recommend, or the Customer may request, at any time in writing changes to any of the Assumptions, to any part of the Specification or other provisions of the Agreement,
    - (b) The Company will notify the Customer in writing of either the Company making a change recommendation (known as "a Change Recommendation") or receiving a written request for changes from the Customer (known as "a Change Request") of the time needed to investigate the implication(s) of the proposal change(s) together with the costs (if any) to be charged by the Company to the Customer for undertaking such an investigation;
    - (c) Assuming the investigation proceeds (since it is for the Customer to give the Company a written instruction to investigate the implication(s) of the proposed change(s) by first having agreed to pay any costs to be charged by the Company to the Customer for undertaking it) the Company will give a written response (known as "a Change Response") showing the effect(s) of the proposal change(s) including:
      - (i) A revised estimate of the number of Chargeable Days estimated to complete the Services;
      - (ii) A revised project timeline;
      - (iii) Any additional expenses that will be incurred;
      - (iv) Any effect(s) on other contractual provisions of the Agreement should the proposed change(s) be implemented and in so doing the Company shall use all reasonable endeavours to ensure that the Change Response is given with such a period as may be reasonably agreed between the Parties of receipt

by the Company of a written instruction to investigate the implication(s) of the proposed changes;

- (d) should the Customer wish to proceed with the proposal change(s) it will instruct the Company in writing of its wish as soon as reasonably
  - (e) until any change is agreed in writing and implemented the Parties shall continue to perform their respective obligations under the Agreement as if the change had not been proposed.
- 4.6 All key personnel and subcontractors provided by the Company to perform the Services pursuant to the Agreement shall have the appropriate technical and application skills to enable them to be adequately perform their duties. All of the Service shall be performed in a competent and work like manner. The Company will use all reasonable efforts to ensure continuity in staffing of its key personnel.
- 4.7 The Customer does not warrant that the Company's technology or the Services will be compatible with any hardware, Software or other technology not furnished by the Company;
- 4.8 Whilst the Company is a reseller of Hardware and Software it shall be sold subject to the Customer's acceptance of the relevant resellers software license(s) for such third party software. The Company aims, wherever possible, to pass onto the Customer the benefit of any and all representations and warranties it receives from the respective third party Software and Hardware suppliers but us under no obligation to do so given that such matters lie outside the Company's control;
- 4.9 The pricing set forth on the Order Form for third party software is estimated to the extent that the actual cost may differ based upon such variables including (but not limited to) the Customer's specific requirements, changes to functionality and changes in pricing by third party software vendors on the date on which the software is ordered all of which said matter lie outside the control of the Company.

#### **5. Right to Change Username, Internet Protocol Address and Password**

The Company shall have the right at any time to change the Username, Internet Protocol Address and/or Password allocated by the Company to the Customer for the purpose of essential network maintenance, enhancement modernisation or other work deemed necessary for the effective operation of the Company's Network.

#### **6. Payments**

- 6.1 A deposit payment for System Orders under an Agreement is payable 10 days prior to any installation date to secure the order.
- 6.2 For all Hardware/Software/Service invoices are on delivery of the goods or service.
- 6.3 Support invoices are strictly net 30 days.
- 6.4 All prices are subject to change.
- 6.5 The Company reserves the right to charge interest on late payments at the rate of 8% above the Bank of England Base Rate in accordance with the provisions of the late Payment of Commercial Debts (Interest) Act 1998 as amended by the late Payment of Commercial Debts Regulations 2002.
- 6.6 All charges and tariffs are quoted exclusive of Value Added Tax.

#### **7. Equipment**

- 7.1 Equipment shall at all times remain at the Customer's sole risk such that the Customer shall be responsible for insuring the Equipment against all risks.
- 7.2 Equipment leased from the Company shall at all times remain the property of the Company.
- 7.3 The Customer agrees to:  
Maintain, at the Customer's expense, comprehensive general liability insurance with a reputable insurance company for the full replacement cost of any equipment leased from the Company throughout the term of the Agreement;

#### **8. Liability**

- 8.1 Nothing in the Agreement shall limit the Company's liability to the Customer for death or personal injury resulting from the Company's negligence.
- 8.2 Except for the Company's liability to the Customer listed in Clause 8.1 (where no limit applies) the Company's liability arising under or in connection with the Agreement for the provision of the Services whether in contract, tort, negligence, breach of statutory duty or otherwise

howsoever arising shall not exceed the greater of £5000.00 (Five Thousand Pounds)

- 8.3 Notwithstanding Clause 8.2 in no case shall the Company be liable either to the Customer or to any third party for or in respects of any indirect, consequential or economic loss including (but not limited to) damage, costs or expenses of any description, loss of profit, business, goodwill, turnover or any other loss arising from its performance or non-performance of its obligations in connection with the Agreement whether arising from breach of contract, tort, breach of duty, negligence or any other cause of action even if the event was foreseeable by the Company or the possibility thereof is or had been brought to the attention of the Company;
- 8.4 Except for the purposes of Clause 8.1, no action or proceedings against the Company arising out of or in connection with the Agreement shall be commenced by the Customer more than one year after the Services have been rendered and in this respect the Customer acknowledges that this Clause constitutes an express waiver of any and all of its rights under any otherwise applicable statute of limitations.

#### **9. Suspension**

- 9.1 The Services may be suspended by the Company 5 days after a notification of suspension has been issued by email and without prejudice to the Company's rights of termination under Clause 10 in the event of the Customer;
  - (a) Failing to make any payment to the Company on the relevant due date for payment;
  - (b) Exceeding its credit limit without the prior written approval of the Company or
  - (c) Being in otherwise breach of the Conditions
- 9.2 Suspension shall not affect the liability of the Customer to pay charges and other amounts to the Company.
- 9.3 The Company reserves the right to suspend the Services if the Customer has not paid the required deposit before a stipulated event or exceeds four times the committed amount during the month for any of the Services or as otherwise provided in the Agreement.

#### **10. Term and Termination**

- 10.1 The Agreement/support shall remain in force for a minimum period of 12 months from acceptance of the Customer's application being the date on which the Order Form/Quotation was signed by the Customer unless otherwise agreed with the Company and as so stated on the Order Form/Quotation.
- 10.2 Termination of the Agreement can be effected:
  - (a) By the Customer giving the Company not less than 30 days prior written notice for Orders/Quotation or 3 months prior written notice for Support contracts;
  - (b) By the Company at any time forthwith if the Customer commits any breach of the Agreement including (but not limited to) non-payment of any fees due;
  - (c) By the Company giving the Customer 10 days prior written notice at its sole discretion for any reason; or
  - (d) By the Company upon receiving written notification of the institution of insolvency, receivership, bankruptcy or any other proceedings for the settlement of the Customer's debts or upon the making of an arrangement for the benefit of the Customer's creditors or upon the dissolution of the Customer.
- 10.3 The Company reserves the right to invalidate any or all of the Customer's Username and Internet Protocol Address issued to the Customer following termination of the Agreement and to re-allocate them to another customer.
- 10.4 The Customer shall return all equipment cables and literature belonging to the Company at the Customers own cost within 5 days of termination of the Agreement and shall ensure that it arrives in good working order otherwise an appropriate fee may be levied by the Company.

#### **11. Rights on Termination**

- 11.1 Termination of the Agreement shall not affect any pre-existing liability of the Customer or affect any right of the Company to recover damages or pursue any other remedy in respect of any breach of the Agreement by the Customer.

11.2 On termination of the Agreement the right to the use of the Internet Protocol Address allocated by the Company shall revert to the Company.

11.3 In the event of termination of the Agreement by the Company due to breach of the Conditions by the Customer, the Company shall be entitled to the balance of all payments which would but for such termination have accrued up to the earliest date upon which the Agreement could have been terminated by the Customer in accordance with the Conditions.

#### **12. Intellectual Property**

12.1 The Company grants to the Customer a limited, non-exclusive license to use the Services as set out in the Order Form throughout the term of the Agreement or until the Agreement is terminated (whichever date is earlier) and subject to the restrictions set forth in the Agreement which said license does not entitle the Customer to any updates, modifications or new releases to the deliverables or software.

12.2 The Company reserves any and all of the Company's copyright, trademarks, trade names, patents and all other intellectual property rights created, developed, subsisting or used in connection with any deliverables, software, the Services or the Specification which are the sole property of the Company.

12.3 The Customer shall not transfer the Customer's License nor sublicense the deliverables or the software except where permitted to do so by the terms of the Agreement and in particular the Customer shall not (and shall not allow any third party to):

- (a) Remove any product identification, copyright, trademark or other notices;
- (b) Sell, pledge, lease, lend, distribute over the internet;
- (c) Load or use portions of the software (whether or not modified or incorporated into or with other software) on or with any machine or system that is not physically kept at the facilities of the Customer or within third party facilities contracted by the Customer.

12.4 The Customer shall not disassemble, decompile or otherwise reverse engineer the Services provided under the Agreement.

#### **13. Force Majeure**

13.1 The Company shall not have any liability to the Customer for any delay, omission, failure or inadequate performance of the Agreement which is the result of circumstances beyond the reasonable control of the Company. Where the Company is so affected in its performance of the Agreement it will notify the Customer in writing as soon as is reasonably possible.

13.2 Where the performance of the Agreement is affected by force majeure the Company shall use its reasonable endeavours to overcome the problem as soon as practicably possible.

#### **14. Expenses of the Company**

The Customer shall pay to the Company all costs and expenses reasonably and properly incurred by the Company in enforcing any of the Conditions or in exercising any of the Company's rights or remedies under the Agreement including (but not limited to) all costs incurred in tracing the Customer in the event that legal process cannot be effected at the last known address of the Customer.

#### **15. Non-Waiver**

15.1 Any allowance of time to pay or any other form of indulgence by the Company shall in no manner affect or prejudice the Company's right to payment and interest pursuant to the Conditions.

15.2 No failure, neglect or delay in enforcing any of the terms of the Agreement may be construed as a waiver of any of the Company's rights in respect thereof nor such neglect, failure or delay a variation of the express terms of the Agreement.

#### **16. Invalidity**

In the event that any part of the Agreement is found to be invalid or otherwise unenforceable then such provision shall be regarded and construed as severable from the Agreement so as not to affect the validity and enforceability of the remainder.

#### **17. Confidentiality**

17.1 Each party undertakes to the other that it shall keep (and shall procure that its directors and employees shall keep) secret and confidential and shall not use or disclose to any other person any information or material of a technical or business nature relating in any manner to the business,

products or services of the other party which the receiving party may receive or obtain in connection with or incidental to the performance of the Agreement but subject to the remaining provisions of this Clause 17.

17.2 Notwithstanding Clause 17.1 the receiving party shall not be prevented from using any general knowledge, experience and skills not treated by the disclosing party as confidential or which do not properly belong to the disclosing party and which the receiving party may have acquired or developed at any time during the term of the Agreement.

17.3 Notwithstanding Clause 17.1, the receiving party shall not be prevented from using the information or material referred to in Clause 17.1 above to the extent such information or material comes into the public domain otherwise than through the default or negligence of the receiving party.

17.4 Notwithstanding Clause 17.1 either party shall have the right to communicate any information concerning the other party to any Government Department, regulatory body or any other form of enforcement authority or as may be required by law.

#### **18. Assignment**

The Customer shall not assign or transfer any of the Customer's right or obligations under the Agreement without the prior written consent of the Company.

#### **19. Clause Headings**

Clause headings are for ease of reference but do not form part of the Agreement and accordingly shall not affect its interpretation.

#### **20. Entire Agreement**

20.1 The Services are provided subject to the Conditions to the exclusion of any other terms and conditions such that and for the avoidance of doubt no terms and conditions contained in any document previously sent by the Customer to the Company prior (or subsequent) the Order Form being signed by the Customer shall be of any effect with respect to the Agreement unless expressly agreed in writing by a director of the Company.

20.2 The Customer acknowledges that in entering into the Agreement the Customer has not relied on and shall not be entitled to rescind the Agreement or to claim damages or any other remedy on the basis of any representation, warranty, undertaking or other form of opinion or statement made by or on behalf of the Company save where expressly contained in the Agreement.

20.3 The Parties hereby agree that the Agreement constitutes the entire Agreement between the Parties in respect of the Services.

#### **21. Variation**

21.1 The Company reserves the right to vary the Conditions as a result of changes required by its insurers, for operational or administrative reasons or in order to comply with changes in the law.

21.2 A current version of the Conditions may be found on the Company's website.

21.3 The Company will provide the Customer with 14 days written notice of any significant changes to the Conditions.

21.4 The Customer will keep the Company promptly informed of any changes to the Customer's address and such other information as may affect the payment of charges due.

#### **22. Law and Jurisdiction**

The Agreement is governed by the laws of England and Wales and is subject to the exclusive jurisdiction of the Courts of England and Wales.

#### **23. Third Party Rights**

The parties agree that it is not hereby intended that any rights should be conferred upon or enforceable by any third party as defined in the Contracts(Rights of Third Parties) ct 1999 unless the context otherwise permits.

