

## 1 INTERPRETATION

### 1.1 In these Conditions:

**'Charges'** the charges to be levied by the Company in respect of the Contract

**'Client'** the organisation and/or person named on the Quotation for whom the Company has agreed to provide the Specified Service in accordance with these Conditions

**'Company'** Promentum Technologies Limited of 3 Cobden Road London SE25 5NZ **'Conditions'** the standard terms and conditions of business set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Client and the Company

**'Contract'** the contract for the provision of the Specified Service

**'Document'** includes, in addition to a document in writing, any map, plan, graph, drawing or photograph, any film, negative, tape or other device embodying visual images and any disc, tape or other device embodying any other data

**'Goods'** any goods (including Output Material) which the Company is to supply in accordance with these Conditions

**'Input Material'** any Documents or other materials, and any data or other information provided by the Client relating to the Specified Service

**'Output Material'** any Documents or other materials relating to the Specified Service provided by the Company

**'Quotation'** the estimate or quotation for provision of the Specified Service

**'Specified Service'** the service to be provided by the Company for the Client (including where appropriate the supply of Goods) and referred to in Schedule A.

**'Withdrawal Fee'** the amount determined by the Company (acting reasonably) representing the costs incurred in relation to the provision of the Specified Service up to and including the date of cancellation by the Client in accordance with Condition 10.1 or suspension or termination of the Contract by the Company in accordance with Conditions 6.4 (a), 10.2 or 10.3

1.2 The headings in these Conditions are for convenience only and shall not affect their interpretation.

1.3 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

## 2 SUPPLY OF THE SPECIFIED SERVICE

2.1 The Company shall provide the Specified Service detailed in Schedule A to the Client subject to these Conditions. Any changes or additions to the Specified Service or these Conditions must be agreed in writing by a director of the Company and authorised representative of the Client.

2.2 Subject to any variation under Condition 2.1 above, the Contract will be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Client purports to apply under any purchase order, confirmation of order, specification or other document).

2.3 Each order for the Specified Service by the Client from the Company shall be deemed to be an offer by the Client to procure the Specified Service subject to these Conditions. No order placed by the Client shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company provides the Specified Service

2.4 Any Quotation is valid for a period of 21 days only from its date, provided that the Company has not previously withdrawn it. The Company may withdraw a Quotation at any time prior to the Client issuing a written acknowledgement of order

2.5 The Client shall at its own expense supply the Company with all necessary Documents or other materials, and all necessary data or other information relating to the Specified Service, within sufficient time to enable the Company to provide the Specified Service in accordance with the Contract. The Client shall ensure the accuracy of all Input Material.

2.6 The Client shall at its own expense retain duplicate copies of all Input Material and insure against its accidental loss or damage. The Company shall use all reasonable endeavours to safeguard such Input Material when in its possession but, except in the case of negligence on the Company's part, shall have no liability for any such loss or damage, however caused. All Output Material shall be at the sole risk of the Client from the time of delivery to or to the order of the Client. The Company may correct any typographical or other errors or omissions in any document relating to the provision of the Specified Service without any liability to the Client.

2.7 The Company may at any time without notifying the Client make any changes to the Specified Service which are necessary to comply with any applicable safety or other statutory requirements, or which do not materially affect the nature or quality of the Specified Service.

## 3. SALE OF GOODS

3.1 The Company's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Company in writing. In entering into the Contract the Client acknowledges that it does not rely on any such representations which are not so confirmed.

- 3.2 If the Goods are to be manufactured or any process is to be applied to the Goods by the Company in accordance with a specification submitted by the Client, the Client shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Company's use of the Client's specification.

#### **4. ORDERS AND SPECIFICATIONS**

The quantity, quality and description of and any specification for the Goods shall be those set out in an acknowledgement of order provided by the Company.

#### **5 CHARGES**

- 5.1 Subject to any special terms agreed, the Client shall pay:
- (a) the Charges (which shall include travel accommodation and subsistence expenses incurred by the Company's employees, agents and subcontractors in attending the Client's premises for the performance of the Specified Service if applicable);
  - (b) any additional sums which are agreed in writing between the Company and the Client for the provision of the Specified Service
  - (c) such sums notified to the Client at any time before delivery of the Specified Service as are in the Company's sole discretion required as a result of:
    - (i) the Client's instructions delay or lack of instructions, or any other delay caused by the Client;
    - (ii) Client generated changes or additions to the Specified Service;
    - (iii) the inaccuracy of any Input Material or failure of the Client to give the Company adequate information;
    - (iv) any increase in the cost to the Company which is due to any factor beyond the reasonable control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, significant increase in the costs of labour, materials or other costs of manufacture); or
    - (v) any change in delivery dates, quantities or specifications for the Goods which are requested by the Client.
  - (d) Value Added Tax on all amounts payable by the Client under the Contract

#### **6 INVOICING**

- 6.1 Unless otherwise agreed by a director of the Company in writing, the Client shall pay Charges levied within 7 days of the date of the Company's invoice
- 6.2 Amounts payable shall be paid by the Client without any set-off or other deduction
- 6.3 Time of payment of sums under the Contract shall be of the essence
- 6.4 If the Client fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:
- (a) cancel the Contract or suspend the provision of the Specified Service (or the delivery of any Goods); and charge the Client interest (both before and after any judgment) on the amount unpaid, at the rate of 5% per cent per annum above Lloyds TSB Bank PLC base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
- 6.5 Receipts for payment will be issued only upon request.

#### **7. CANCELLATION**

No order for the provision of the Specified Service which has been accepted by the Company may be cancelled by the Client unless either Condition 10.1 or 10.3 applies or the Company has agreed to the cancellation in writing and in the case of Condition 10.1, upon terms that the Client shall pay the Withdrawal Fee.

#### **8 INPUT MATERIAL AND OUTPUT MATERIAL**

- 8.1 The property and any copyright or other intellectual property rights in:
- (a) Input Material shall belong to the Client
  - (b) Output Material (including all intellectual property rights of the same) shall belong to the Company, subject to the right of the Client to use the Output Material for the purposes of using the Specified Service.
- 8.2 Any Input Material or other information provided by the Client which is so designated by the Client and any Output Material shall be kept confidential by the Company, and all Output Material or other information provided by the Company which is so designated by the Company shall be kept confidential by the Client; but the foregoing shall not apply to any Documents or other materials, data or other information which are public knowledge at the time when they are so provided by either party, and shall cease to apply if at any future time they become public knowledge through no fault of the other party.
- 8.3 The Client warrants that:
- (a) any Input Material and its use by the Company for the purpose of providing the Specified Service; and

- (b) any specification or instructions submitted by the Client in relation to Goods to be manufactured or to which any process is to be applied by the Company;  
will not infringe the patent, copyright, design, trade mark or other industrial or other intellectual property rights of any other person
- 8.4 Notwithstanding Condition 8.3 above the Client shall indemnify the Company, its subsidiary and associated companies and any employees, agents, consultants and contractors working on the Specified Service against all or any costs, claims, damages, demands and expenses to which the Company, its subsidiary and associated companies and any employees, agents, consultants and contractors working on the Specified Service may become liable by use of the reports, recommendations, programmed packages, computer programmes or any other material or services supplied by the Client or by use of material of the same description supplied by the Company and used in accordance with the Client's instructions.
- 8.5 Subject to Conditions 8.3 and 8.4, the Company warrants that any Output Material and its use by the Client for the purposes of utilising the Specified Service will not infringe the copyright or other rights of any third party, and the Company shall indemnify the Client against any loss, damages, costs, expenses or other claims arising from any such infringement **PROVIDED THAT:**
- (a) the Company is given full control of any proceedings or negotiations if so requested;
  - (b) the Client shall give the Company all reasonable assistance for the purposes of any such proceedings or negotiations;
  - (c) except pursuant to a final award, the Client shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Company (which shall not be unreasonably withheld);
  - (d) the Client shall do nothing which would or might invalidate or detrimentally affect any policy of insurance or insurance cover which the Client may have in relation to such infringement, and this indemnity shall not apply to the extent that the Client recovers any sums under any such policy or cover (which the Client shall use its reasonable endeavours to do);
  - (e) the Company shall be entitled to the benefit of, and the Client shall accordingly account to the Company for, all damages and costs (if any) awarded in favour of the Client which are payable by, or agreed with the consent of the Client (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim; and
  - (f) without prejudice to any duty of the Client at common law, the Company shall be entitled to require the Client to take such steps as the Company may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Company is liable to indemnify the Client under this Condition.

## 9 WARRANTIES AND LIABILITY

- 9.1 The Company warrants to the Client that the Specified Service will be provided using reasonable care and skill.
- 9.2 Where the Company supplies in connection with the provision of the Specified Service any Goods (including Output Material) supplied by a third party, the Company does not give any warranty, guarantee or other term as to their quality, fitness for purpose or otherwise, but shall, where possible, assign to the Client the benefit of any warranty, guarantee or indemnity given by the person supplying the goods to the Company.
- 9.3 In relation only to Goods manufactured by the Company the Company warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 3 months from the date of their initial use or from delivery, whichever is the first to expire. [Note that 9.7 only applies during the period in 9.3]
- 9.4 The warranty contained in Condition 9.3 above is given by the Company subject to the following conditions:
- (a) the Company shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Client;
  - (b) the Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's written instructions, alteration or repair of the Goods without the Company's approval;
  - (c) the Company shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;
  - (d) the above warranty does not extend to parts, materials or equipment not manufactured, created or produced by the Company, in respect of which Condition 9.2 applies
- 9.5 Subject as expressly provided in these Conditions, and except where the Specified Service is supplied to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 9.6 The Company shall have no liability to remedy a breach of warranty under the Contract where such breach arises as a result of any of the following circumstances:
- (a) improper use operation or neglect of the Goods or on any equipment, machinery upon or into which the Goods are linked;
  - (b) modification of Goods or their merger (in whole or in part) with other goods;

- (c) failure by Client to implement recommendations in respect of the Specified Service previously made by the Company (or the manufacturer of Goods);
  - (d) any repair adjustment tampering with alteration or modification of the Goods or the goods upon which the Specified Service has been performed (including the incorporation of additional software or changes made to system settings) by any person other than Company without Company's prior written consent;
  - (e) any breach by Client of any of its obligations under any maintenance agreement in respect of any equipment using or linked to Goods supplied under the Contract;
  - (f) use of Goods for a purpose for which they were not designed.
- 9.7 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Company in accordance with these Conditions and the warranty in Condition 9.3 applies, the Company shall be entitled to either repair or replace the Goods (or the part in question) with the same (or similar Goods in the event that the original goods cannot be supplied for any reason) free of charge or, at the Company's sole discretion, refund to the Client the price of the Goods (or a proportionate part of the price), but the Company shall have no further liability to the Client. PROVIDED THAT the Client shall be responsible for the shipping or delivery costs of returning the goods to the Company for amendment
- 9.8 The Company shall have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising from any Input Material or instructions supplied by the Client which are incomplete, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Client.
- 9.9 Except in respect of death or personal injury caused by the Company's negligence, or as expressly provided in these Conditions, the Company shall not be liable to the Client by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the negligence of the Company, its servants or agents or otherwise) which arise out of or in connection with the provision of the Specified Service or their use by the Client, and the entire liability of the Company under or in connection with the Contract shall not exceed the Charges levied, except as expressly provided in these Conditions.

## **10 TERMINATION**

- 10.1 The Client shall be entitled to terminate the Contract:
- (a) if the Company goes into liquidation, makes a voluntary arrangement with its creditors or has a receiver or administrator appointed; or
  - (b) by giving ninety days notice in writing to the Company after the last day of the minimum Contract Term specified in Schedule A , specifying the Specified Service to which the notice relates.
- 10.2 This Condition applies if:
- (a) the Client makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction);
  - (b) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Client;
  - (c) any notice to the Client that a petition to wind up the Client is to be or has been presented or any notice convening a meeting of the Client at which a resolution is to be proposed to wind up the Client (save for the purposes of and followed by a bona fide reconstruction or amalgamation);
  - (d) the Client ceases, or threatens to cease, to carry on business; or
  - (e) the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Client and notifies the Client accordingly; or
  - (f) If the Client acts in such a way so as to significantly impair the ability of the Company to perform the Contract and the Client fails to cease such acts after formal written notice of the complaint by the Company;
- If this Condition applies then, without prejudice to any other right or remedy available to the Company the Company shall be entitled to cease or suspend the Specified Service cancel the Contract or suspend any further deliveries under the Contract without any liability to the Client, and if any Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary and the Company may make and the Client shall pay upon demand the Withdrawal Fee
- 10.3 Either party may (without limiting any other remedy) at any time terminate the Contract by giving written notice to the other if the other commits any breach of these Conditions and (if capable of remedy) fails to remedy the breach within 30 days after being required by written notice to do so and in the case of a non-remedied breach by the Client, the Company shall be entitled without prejudice to any other right or remedy to demand payment by the Client of the Withdrawal Fee.

## **11 FORCE MAJEURE**

- 11.1 Neither party shall be liable to the other or be deemed to be in breach of the Contract by reason of any failure or delay in the performing any of their respective obligations under the Contract if the delay or failure to perform is due to any cause beyond their reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond a party's reasonable control:
- (a) Act of God, explosion, flood, tempest, fire or accident;
  - (b) war or threat of war, sabotage, insurrection, civil disturbance or requisition;
  - (c) acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
  - (d) import or export regulations or embargoes;
  - (e) strikes or other industrial actions (whether involving employees of the Company or of a third party);
  - (f) difficulties in obtaining raw materials, labour, fuel, parts or machinery;
  - (g) power failure or breakdown in machinery (including office equipment) PROVIDED THAT should either of these occur at the Client's offices whilst the Company is performing the Specific Service the Company shall be entitled to charge the Client for time spent at the Client's offices notwithstanding the power failure or breakdown in machinery

## 12 DELIVERY OF GOODS

- 12.1 Delivery of Goods shall be made by the Company delivering the Goods to the Client at the Company's premises, or, if some other place for delivery is agreed by the Company, by the Company delivering the Goods to that place.
- 12.2 Any dates quoted for delivery of the Specified Service are approximate only and the Company shall not be liable for any delay in delivery of the Specified Service (or part thereof) however caused. Time for delivery shall not be of the essence of the Contract.
- 12.3 If the Company fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Company's reasonable control or the Client's fault, and the Company is accordingly liable to the Client, the Company's liability shall be limited to the excess (if any) of the cost to the Client (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- 12.4 If the Client fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Client's reasonable control or by reason of the Company's fault) then, without prejudice to any other right or remedy available to the Company, the Company may:
- (a) store the Goods until actual delivery and charge the Client for the reasonable costs (including insurance) of storage; or
  - (b) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Client for the excess over the price under the Contract or charge the Client for any shortfall below the price under the Contract.

## 13 RISK AND PROPERTY

- 13.1 Risk of damage to or loss of the Goods shall pass to the Client:
- (a) in the case of Goods to be delivered at the Company's premises, at the time when the Company notifies the Client that the Goods are available for collection; or
  - (b) in the case of Goods to be delivered otherwise than at the Company's premises, at the time of delivery or, if the Client wrongfully fails to take delivery of the Goods, the time when the Company has tendered delivery of the Goods.
- 13.2 The Company shall insure the Goods until delivery of the Goods in accordance with Condition 13.1 above.
- 13.3 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Client until the Company has received in cash or cleared funds payment in full of all outstanding Charges and other charges levied by the Company against the Client for which payment is then due.
- 13.4 Until such time as the property in the Goods passes to the Client, the Client shall hold the Goods as the Company's fiduciary agent and bailee, and shall keep the Goods separate from those of the Client and third parties and properly stored, protected and insured and identified as the Company's property, but the Client shall be entitled to resell or use the Goods in the ordinary course of its business.
- 13.5 Until such time as the property in the Goods passes to the Client (and provided the Goods are still in existence and have not been resold), the Company shall be entitled at any time to require the Client to deliver up the Goods to the Company and, if the Client fails to do so forthwith, to enter upon any premises of the Client or any third party where the Goods are stored and repossess the Goods.
- 13.6 Client shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company, but if the Client does so all moneys owing by the Client to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.

#### **14 EXPORT TERMS**

- 14.1 Where the Goods are supplied for export from the United Kingdom, the provisions of this Condition 14 shall (subject to any special terms agreed in writing between the Client and the Company) apply notwithstanding any other provision of these Conditions.
- 14.2 The Client shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.
- 14.3 Unless otherwise agreed in writing between the Client and the Company, the Goods shall be delivered FOB to the air or sea port of shipment and the Company shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
- 14.4 Unless otherwise agreed, the Client shall be responsible for arranging for testing and inspection of the Goods at the Company's premises before shipment. The Company shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

#### **15 NON-SOLICITATION OF EMPLOYEES**

During the Contract and for a period of 6 months after the Contract has determined or terminated ("the Specified Period") the Client (nor any company within the Client's corporate group) will not initiate or engage in discussions with any person who is now or was an officer, employee or consultant of the Company (or any of its subsidiaries or associates) during the Contract Period or encourage them to end their relationship with the Company (whether they breach their contract to do so or not)

#### **16 GENERAL**

- 16.1 These Conditions constitute the entire agreement between the parties and supersede any previous agreement or understanding. All other terms and conditions, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.
- 16.2 Client shall not be entitled to assign the Contract without Company's prior written consent of the Company. Company shall be entitled to assign the Contract and specifically to subcontract out the whole or any part of the Contract from time to time.
- 16.3 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 16.4 No failure or delay by either party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either party of any breach of the Contract by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 16.5 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 16.6 The Client shall only be entitled to consider recommendations made to the Client by the Company, its employee or agents in writing as being part of the Specified Service
- 16.7 The Client shall be responsible for ensuring compliance with the terms of any licence or other agreement which they enter into relating to Goods supplied including (without limitation) the terms of any software licence
- 16.8 The Contract shall be governed by the laws of England, and the parties agree to submit to the non-exclusive jurisdiction of the English courts.