

The following are the general Terms and Conditions under which Fortem provides computer and business related services and unless otherwise expressly stated in writing, these Terms and Condition shall apply to all Agreements between Fortem and its customers.

## 1. General

In these Terms and Conditions:-

a) **"Agreement"** means any agreement(s) entered into between the Company and a Customer for the supply of Products and/or provision of Services in accordance with, and subject to, these Terms and Conditions;

b) **"Business Day"** is a day other than a Saturday, Sunday or public holiday in

England when banks in London are open for business.

c) **"Company"** means Fortem IT Limited (or any subsidiary or holding company of the Company from time to time), a private limited company registered in England & Wales with company number 5924916 and whose registered office is situated at Alpha House, 100 Borough High Street, London, SE1 1LB

d) **"Company Materials"** means all materials, equipment documents and any other property of the Company;

(e) **"Customer"** means the individual firm, company or other party with whom the Company contracts;

f) **"Force Majeure Event"** means an event beyond the reasonable control of the Company including but not limited to strikes, lock outs or other industrial disputes, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or government order, rule regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

g) **"Intellectual Property Rights"** means patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or form of protection which subsist or will subsist now or in the future in any part of the world.

h) **"Order"** means in the case of the supply of Products, the Customer's order for the Products as set out in the Customer's purchase order form or the Customer's written acceptance of the Company's quotation as set out in clause 2.2, or in the case of the provision of Services, the Customer's written acceptance of the Statement of Works as set out in clause 2.3.

i) **"Product(s)"** means any products to be supplied to the Customer pursuant to an Order;

j) **"Service(s)"** means consulting services and/or technical support services or installation services supplied by the Company to the Customer as set out in the Statement of Work;

k) **"Statement of Work"** means the description and/or specification of the Services provided in writing by the Company to the Customer.

## 2. Basis of Contract

2.1 The Company shall provide the Customer with a written quotation or a written Statement of Work for the Products and/or Services, as the case may be.

2.2 In the case of the supply of Products, once the Company has issued a quotation to the Customer, the Customer shall issue a purchase order which shall be deemed as acceptance of the Agreement and at which point and on which date the Agreement shall come into existence.

2.3 In the case of the provision of Services by the Company, the Customer shall counter-sign the Statement of Works provided to it by the Company which shall be deemed as acceptance of the Agreement and at which point and on which date the Agreement shall come into existence.

2.4 All Orders for the Products must state the type and quantity of the Products along with a requested date for delivery and a delivery address.

2.5 Any quotation or Statement of Works prepared by the Company for the Customer shall only be valid for a period of 30 Business Days from its date of issue after which the quotation of Statement of Work shall lapse.

2.6 All Orders submitted by the Customer to the Company in accordance with clause 2.2 or 2.3 shall be made in writing and sent either by fax or by email to the Company.

2.7 If Orders are placed by telephone they must then be confirmed by the Customer to the Company in writing by sending either a fax or an email in accordance with clause 2.6 above within 24 hours of the Order being placed on the telephone. Acknowledgment of receipt by the Company of such written confirmation shall be deemed as acceptance of the Agreement and at which point and on which date the Agreement shall come into existence. If the Company does not receive such written confirmation within 24 hours of the Order being placed on the telephone then there shall be no deemed acceptance of the Agreement and the Company shall not be liable to supply the Products or provide the Services to the Customer.

2.8 The Company reserves the right to amend the specification of the Products set out in the quotation if required by any applicable statutory or regulatory requirements.

2.9 The Agreement constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, assurance or warranty made or given by the Company which is not set out in the Agreement.

2.10 These Terms and Conditions shall apply to the Agreement to the exclusion of any other terms and conditions that the Customer seeks to impose or incorporate or which are implied by trade, custom, practice or course of dealing.

2.11 These Terms and Conditions shall apply to the supply of Products and the provision of Services except where application to one or the other is specified.

## 3. Delivery and Performance

3.1 The Company shall deliver the Products to the address specified by the Customer in the Order or to such other location as the parties shall agree in writing ("Delivery Location").

3.2 Delivery of the Products shall be completed on the Products' arrival at the Delivery Location.

3.3 Any dates for delivery of the Products are approximate only, and the time of delivery is not of the essence. The Company shall not be liable for any delay in delivery of the Products that is caused by a Force Majeure Event or the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the delivery of the Products.

3.4 If the Company fails to deliver the Products, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Products. The Company shall have no liability for any failure to deliver the Products to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Company with adequate delivery instructions for the Products.

3.5 If the Customer refuses to take delivery of the Products within 14 Business Days of the Company notifying the Customer that the Products have been delivered to the Delivery Location, then except where such failure or delay is caused by a Force Majeure Event or by the Company's failure to comply with its obligations under the Agreement in respect of the Products, then:

(a) delivery of the Products shall be deemed to have been completed at 9.00am on the fourteenth (14th) Business Day following the day on which the Company notified the Customer that the Products were delivered; and

(b) the Company shall store the Products until a revised delivery takes place and charge the Customer for all related costs and expenses (including insurance).

3.6 In the event that the Customer requests a change in the delivery date for the Products to the date specified in the Order, the Customer shall pay the Company any such reasonable costs and expenses that the Company may incur in fulfilling such a request.

3.7 The Company may deliver the Products earlier than the delivery date set out in the Order by giving no less than 1 Business Days' notice to the Customer.

3.8 The Company may deliver the Products by instalments which shall be invoiced and paid for separately. Each instalment shall constitute a separate Agreement. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

#### 4. Cancellation.

##### 4.1 Products:-

The Customer shall not be entitled to cancel any Orders for the Products unless the Customer reimburses the Company in full for such reasonable costs, Company in respect of cancelling the Order of those Products. All Products returned to the Company by the Customer must be in the same condition as they were on delivery with all original packaging and boxes and all parts and manuals.

##### 4.2 Services

If the Customer wishes to cancel or postpone any Services once an Order has already been made, the Customer must provide the Company with prior written notice of such cancellation or postponement and the Customer shall be liable to pay the following cancellation fees:-

Notice of Cancellation/ Postponement	Cancellation Fee (% of the total price for services as set out in the statement of works/quotation)	Postponement Fee (% of the total price for Services as set out in the Statement of Works/ Quotation)
Less than one (1) Business Day prior to the start date for delivery of Services	100%	100%
Up to five (5) Business Days prior to the start date for delivery of services	50%	50%
Five(5) or more Business Days prior to the start date for delivery of services	25%	25%

#### 5. Quality of Products

5.1 The Company warrants that on delivery of the Products, the Products:

- conform with their description in the Order;
- are free from material defects in design, material and workmanship; and
- are of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

5.2 Subject to clause 5.3, if:-

(a) the Customer gives written notice to the Company within 7 Business Days of discovering that some or all of the Products do not comply with the warranty set out in clause 5.1;

(b) the Company then has a reasonable opportunity of examining such Products; and

(c) the Customer (if asked to by the Company) returns such then the Company shall, at its option, repair or replace the defective Products, or refund the price of the defective Products to the Customer in full.

5.3 The Company shall not be liable for the Products' failure to comply with the warranty in clause 5.1 if:-

(a) the Customer makes any further use of such Products after giving notice to the Company in accordance with clause 5.2(a);

(b) the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, installation, use or maintenance of the Products;

(c) the Customer alters or repairs such Products without the written consent of the Company; or

(d) the defect arises as a result of fair wear and tear, wilful damage negligence or abnormal working conditions.

5.4 Except as already provided in this clause 5, the Company shall have no liability to the Customer in respect of the Products' failure to comply with the warranty in clause 5.1.

5.5 These terms shall apply to any repaired or replacement Products supplied by the Company under clause 5.2.

5.6 The terms implied by sections 13 to 15 of the Sale of Good Act 1979 are, to the fullest extent permitted by law, excluded from the Agreement.

#### 6. Title and Risk

6.1 Title and risk in the Products shall pass to the Customer on completion of delivery.

#### 7. Supply of Services

7.1 The Company shall provide the Services to the Customer in accordance with the Statement of Works and / or quotation.

7.2 The Company shall use all reasonable endeavours to meet any performance dates for the Services provided in the Statement of Works, but any such dates shall be estimates only and time shall not be of the

essence for the performance of the Services.

7.3 The Company shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the quality of the Services and the Company shall notify the Customer in any such event.

7.4 The Company warrants to the Customer that the Services will be provided using reasonable care and skill. The terms implied by section 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Agreement.

#### 8. Customer Obligations

8.1 The Customer shall:-

- co-operate with the Company in all matters relating to the Services;
- provide the Company, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office and other facilities as reasonably required by the Company to provide the Services;
- provide the Company with such information and materials as the Company may reasonably require to supply the Services;
- keep and maintain all Company Materials at the Customer's premises in safe custody at its own risk and not dispose of the Company Materials other than in accordance with the Company's written instructions or authorisation.

8.2 If the Company's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform its obligations in clause 8.1 ("Customer Default"), then:-

- the Company shall without limiting any of its other rights and remedies, have the right to suspend performance of
- the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause 8.2; and
- the Customer shall reimburse the Company for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer Default.

8.2 The Customer shall take all reasonable precautions to ensure the health and safety of the Company's employees, agents, consultants and subcontractors while they are on the Customer's premises.

#### 9. Charges and Payment

9.1 The Company shall render to the Customer an invoice or series of invoices on or at any time after completion of delivery of the Products and/or Services and unless otherwise agreed, the Customer shall pay such charges in full and in cleared funds to a bank account nominated in writing by the Company, within thirty (30) days of the date of each invoice.

9.2 The price payable for the Products and/or Services shall be the price agreed in advance between the parties as set out in the Company's quotation and/or Statement of Work in accordance with clause 2.

9.3 The Company reserves the right to increase the price of the Products, by giving written notice to the Customer at any time before delivery, to reflect any increase in the cost of the Products to the Customer that is due to:-

- any factor beyond the control of the Company (including foreign exchange fluctuations, increases in taxes and duties and increases in labour, materials and other manufacturing costs);
- any request by the Customer to change the delivery dates, quantities or types of Products ordered pursuant to clause 3.6;
- any delay in delivery of the Products caused by failure of the Customer to provide the Company with adequate delivery instructions in accordance with clause 3.3.

9.6 Charges specified in the Agreement do not include Value Added Tax which, if applicable, will be added at the rate in force at the time of supply.

9.7 If the Customer fails to make any payment due to the Company under the Agreement by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% above the Bank of England base rate from time to time. Such interest shall accrue on a monthly basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

9.8 The Company reserves the right to suspend further deliveries of Products and/or suspend the provision of Services to the Customer if any sums of money due from the Customer to the Company remain unpaid.

9.9 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.

9.10 In the case of supply of Products to a Customer outside the UK the Customer will be responsible for all import levies, customs duties or other similar taxes of whatever nature.

## 10. Intellectual Property Rights

10.1 Unless otherwise agreed in writing between the parties, all Intellectual Property Rights in or arising out of or in connection with the Products and/or Services (including the Company Materials and any other associated documentation and any documentation supplied in respect of the Products and/or Services) shall be owned by the Company.

10.2 All Company Materials are the exclusive property of the Company.

10.3 The Customer shall follow all reasonable instructions given by the Company from time to time with regard to the use of any Intellectual Property owned by the Company.

## 11. Software Product Copying

11.1 Subject to clause 11.2, upon the written approval by the Company the Customer may make such copies of software Products developed by the Company as are necessary for operational use and security thereof.

11.2 Every such copy of software Products made by the Customer in accordance with clause 11.1 shall contain or have annexed to it in a prominent position, a notice stating that the software Products are confidential, are wholly owned by the Company and may not be copied or used wholly or in part by any means whatsoever without the Company's prior written consent.

11.3 All third party software products are subject to individual manufacturer's license agreements in respect of copying.

## 12. Limitation of Liability

12.1 Nothing in these Terms and Conditions shall limit or exclude the Company's liability for:-

- (a) death or personal injury caused by its negligence, the negligence of its employees, agents or subcontractors;
- (b) fraud or misrepresentation;
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- (e) defective products under the Consumer Protection Act 1987.

12.2 Subject to clause 12.1:-

- (a) the Company shall under no circumstances whatsoever 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 the Agreement; and
- (b) the Company's total liability to the Customer in respect of all other losses arising under or in connection with the Agreement, whether in in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the aggregate paid by the Customer to the Company for Products and/or Services under the Agreement.

12.3 This clause 12 shall survive termination of the Agreement.

## 13. Termination

13.1 Either party may terminate the Agreement with immediate effect by giving written notice to the other party in any of the following events:-

- (a) either party commits a material breach of the Agreement and which is incapable of remedy;
- (b) either party fails to perform its obligations under the Agreement or commits a material breach which is capable of remedy but which the parties fail to remedy within fourteen (14) days of receiving written notice by the other party specifying the event of default and requiring its remedy;
- (c) either party is taken over by a company that markets products or services which in any way competes with the Products and/or Services supplied by the Company;
- (d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts;
- (e) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
- (g) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

(h) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party;

(i) the holder of a qualifying charge over the assets of the other party has become entitled to appoint or has appointed an administrative receiver; or

(j) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

13.2 Without limiting its other rights or remedies, the Company may terminate the Agreement or suspend the supply of Services or all further deliveries of Products under the Agreement if the Customer:-

- (a) fails to pay any amount due, or is persistently late in making any payments due, under the Agreement on the due dates for payment; or
- (b) the Customer becomes subject to any of the events listed in clause 13.1 (c) to (j) or the Company reasonably believes that the Customer is about to become subject to any of them.

## 14. Consequences of Termination

14.1 On termination of the Agreement for whatever reason:

- (a) the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices plus any accrued interest thereon;
- (b) in respect of Services provided or Products supplied but for which no invoice has yet been issued by the Company, the Company shall issue an invoice which shall be payable by the Customer immediately upon receipt;
- (c) the Customer shall immediately return all Company Materials to the Company. If the Customer fails to do so, the Company may enter the Customer's premises and take possession of them at the Customer's risk. Until all Company Materials have been returned to the Company, the Customer shall be solely responsible for their safe-keeping and will not use them for any purpose which is not connected with the Agreement;
- (d) the accrued rights and remedies of either the Company or the Customer shall not be affected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination; and
- (e) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## 15. Confidentiality

15.1 The Customer shall keep confidential the Products and documentation in respect thereof and any documentation supplied in connection with the Services or any part thereof and shall not disclose the same to any third party without the prior written consent of the Company.

15.2 The Company and the Customer shall keep confidential the Agreement and all other information of the other party obtained under, or in connection with, the Agreement and shall not divulge the same to any third party without the prior written consent of the other party.

15.3 The Company and the Customer may disclose the other party's confidential information to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 15.

15.4 The provisions of this clause 15 shall not apply to:

- (a) any information in the public domain otherwise than by breach of the Agreement;
- (b) information which was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
- (c) information obtained from a third party who is free to divulge the same; or
- (d) information which the parties agree in writing is not confidential or may be disclosed.

15.5 The provisions of this clause 15 shall continue to apply after termination of the Agreement.

## 16. Notice

16.1 Any notice pursuant to the Agreement shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or to such other address as shall be notified in writing to the other party to the Agreement and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service (airmail if overseas) or by commercial courier, fax or email.

16.2 Any notice delivered personally shall be deemed to be received when delivered at the address specified in clause 16.1 and any notice sent

by prepaid first-class post or other next working day delivery service, at 9:00am the second Business Day after posting (six Business Days if sent by airmail) and in proving the time of despatch it shall be sufficient to show that the envelope containing such notice was properly addressed, stamped and posted.

16.3 Any notice sent by fax or email transmission shall be deemed to have been received upon receipt by the sender of the correct answerback or transmission report.

#### **17. Waiver**

17.1 No failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise 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.

#### **18. Severance**

18.1 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.

#### **19. Variation**

19.1 No variation in the provisions of the Agreement shall be effective unless it is in writing and signed in advance on behalf of the Customer and the Company.

#### **20. Assignment**

20.1 The Customer shall not be entitled to assign, lease, transfer or part with its rights, responsibilities or obligations or any part thereof under the Agreement without the prior written consent of the Company.

#### **21. Set-off**

21.1 Unless otherwise agreed in writing, the Customer shall not be entitled to set off against any monies due to the Company under the Agreement or any other account whatsoever, any amount claimed by or due to the Customer from the Company whether pursuant to the Agreement or in any other account whatsoever.

#### **22. Force Majeure**

22.1 Neither party will be liable for failure to perform obligations under the Agreement if that failure is a result of a Force Majeure Event.

#### **23. Offers of Employment**

23.1 The Customer hereby agrees that if during the period of 9 months following the last date that the Customer placed an Order [or had dealings] with the Company (the Effective Date), it employs (in any capacity whatsoever) a person who is or was an employee of the Company at the Effective Date, then the Customer will be liable to pay to the Company (without deduction or set-off) a sum equivalent to 50% of the employee's annual salary or remuneration with the Customer [or in default of the last salary received by the employee whilst an employee of the Company] such sum being a debt due from the Customer to Fortem IT and payable within 5 Business Days of demand by the Company.

#### **24. Third Parties**

24.1 A person who is not a party to the Contract shall not have any rights to enforce its terms.

#### **25. No Partnership or Agency**

25.1 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 of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

#### **26. Mediation**

26.1 If any dispute arises in connection with the Agreement, the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the parties within 14 days of notice of the dispute, the mediator will be nominated by CEDR.

#### **27. Governing Law**

27.1 These Terms and Conditions, the Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

#### **28. Jurisdiction**

28.1 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Terms and Conditions and the Agreement or its subject matter or formation (including non-contractual disputes or claims).

#### **29. Entire Agreement**

29.1 The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.