

HYPEREXT LIMITED – Conditions of Supply of Services and Goods

These Conditions set out the terms on which Hyperext Limited (“we” and similar phrases) has agreed to supply services and/or goods to the Customer named overleaf (“you” and similar phrases):

1. DEFINITIONS

For ease of reference certain terms used elsewhere in these Conditions are defined as follows:

- “Goods” means any hardware, materials, products, goods and articles of any kind supplied by us to you;
- “Intellectual Property Rights” means any patent, copyright, design right, trademark, confidential information, know-how and all similar rights whether or not registered or capable of registration arising from the performance of the Services and/or the supply of the Goods (excluding all intellectual property rights of third parties used in the creation or supply of the Services and/or Goods);
- “Price” means the price (or calculated on the basis of the rates) specified in a quotation together with VAT and any other applicable taxes or duties;
- “Services” means the work and services which we have agreed to carry out for you (including where appropriate the supply of any Goods). The Services are more fully described in the quotation relating to the particular services you require us to perform.

2. RESELLERS

- 2.1 In the situation where you as the Customer have been confirmed in writing by us as one of our resellers, references to ‘you’ and similar phrases will be to you. However, it is understood that your customers are the ultimate users of our Goods and Services, though we have no contractual relationship with those businesses. You agree that we may have contact with those customers directly, if they should choose to contact us for any reason – though as those end users are your customers - at our request, we may insist that all end user contact comes via you and you manage the end user relationship.
- 2.2 As a reseller, we hereby grant you a non-exclusive, non-transferable, non-sublicensable right and license during the term of this agreement to market, display and demonstrate the agreed Goods and Services to your end users and distribute and / or grant sub-licenses to them to such end users directly (subject to prompt payment by you and possible termination of sub-licenses due to non-payment).
- 2.3 If you fail to pay for sub-licenses within agreed payment terms, all and any sub-licenses provided by you to end users may be terminated by us without notice to you or the end user. In such a case, we shall also have the right to be able to remotely disable the use of any such Goods and Services by any means and if any

action whatsoever is taken by the end user against us due to this, you shall indemnify us in relation to any such action on the same terms as the indemnity below. We are also able to then directly licence the end user.

- 2.4 You may not copy, reverse engineer, re-use, resell beyond authorized customers, or distribute any Goods and Services without our written consent.
- 2.5 You may describe yourselves as one of our ‘authorised resellers’ until we inform you otherwise.
- 2.6 Other than the ability to grant sub-licenses strictly in accordance with this agreement, you shall have no authority, and shall not hold yourself out, or permit any person to hold itself out, or otherwise create the impression that you are authorised to bind us in any way, and shall not do any act which might reasonably create the impression that you are so authorised.
- 2.7 You shall not make or enter or attempt to enter into any contracts or commitments (other than providing sub-licenses of the agreed Goods and Services strictly in accordance with this agreement) or incur any liability for or on our behalf.
- 2.8 You shall not produce any marketing material regarding our Goods and Services of any nature whatsoever without our written consent and shall not use our name, logo or trademarks in any manner whatsoever without our prior written consent.
- 2.9 You shall not, without our prior written consent, make or give any representations, warranties or other promises whatsoever regarding our Goods and Services.
- 2.10 This reseller agreement can be terminated by either party with thirty (30) days' written notice. Upon termination, your reseller rights cease, but existing end user licenses remain valid with support directly from us (if the support option has been purchased by the end user and is still in term). End user licenses survive termination of this agreement.

3. OUR OBLIGATIONS

- 3.1 We agree to carry out the Services and/or to supply Goods on the terms of these Conditions only. We will not be bound by any contrary, different or additional terms or conditions contained or referred to in your order form or other documents or correspondence; nor will we agree to any addition, alteration or substitution of these Conditions unless they are expressly accepted by us in writing.
- 3.2 The scope of the Services is set out in the quotation. We will use all reasonable endeavours to provide the Services within any time scale indicated in the quotation. However, that time scale is only an estimate and accordingly we can accept no responsibility or liability, financial or otherwise in the event that we are unable for any reason to keep to the timetable.
- 3.3 We may perform the Services ourselves or where at our discretion we consider it necessary or desirable we may instruct third parties to carry out the whole or any part of the Services on your behalf.
- 3.4 Where we have agreed to supply Goods the description of those Goods is set out in the quotation. Unless the quotation provides otherwise no other descriptive

material or specification whether written or oral contained in any correspondence or statement or in promotional or sales literature shall form any part of an agreement between us.

3.5 We may suspend or cease performance of the Services or delivery of Goods at our discretion if at any time you are in breach of your obligations under these Conditions or we have reason to believe that you may not be able to pay your debts as they fall due or there is any change in your ownership or control which for whatever reason we consider makes it unsuitable or undesirable for us to continue to work for you and in any such case we shall notify you in writing and on such notification we shall have no further liability or obligation to you.

4. PRICE AND PAYMENT TERMS

4.1 You are to pay the Price in the manner and at the times mentioned in the quotation and/or at the hourly rate or part thereof stated on an order form or any other method by which we inform you, or if there is no such time or method mentioned, in full not later than fourteen days after the date of our invoice to you. We shall raise an invoice shortly following the end of each month and such invoice will relate to the work carried out in that month for you. The time that was taken to supply the Services and therefore the Price will be determined by us and save in the case of manifest error, you will be bound by our determination. All Goods (e.g. third-party software and/or hardware, etc) must be paid for prior to us paying our suppliers and we will inform you whether this must be prior to us making an order or the specific time that you must pay us. If payment for Goods is not made at the stipulated time, this may delay the performance of the Services or us otherwise assisting you and we accept no responsibility or liability for this. If you instruct us in whatever manner to order Goods you cannot cancel that order and are liable for payment at the required time, as stated above.

4.2 If payment is not made by the due date, we may charge interest on the amount outstanding at the rate of 8% above the Bank of England base rate applicable from time-to-time p.a. until payment in full.

4.3 We are not obliged to start work unless and until you shall have paid to us such sums by way of deposit as shall be specified in our quotation or otherwise agreed between us. If any other monies are not paid by the due date(s), we shall be entitled to stop any work which we are doing on your behalf in relation to the provision of the Services and to suspend delivery of any Goods which may be due. We may also at our discretion take any other action which is legally available as we think fit.

4.4 All prices or estimates quoted to you are based on information available to us at the time of quotation. Our Price does not include the cost of carriage, packing, customs, duties, insurance or any other similar item. In the event that any third-party providing services to us, which are part of the Services specified in the quotation, shall raise its charges to us we reserve the right to pass on those increased charges to you in addition to the sum quoted in the quotation. You agree and understand that it is difficult to estimate at the outset how long it will

take to perform certain Services and therefore the Price, given their nature and/or the fact that the exact cause of a problem is hard to identify with certainty or at all without visiting your place of business or due to other reasons.

4.5 In the event that performance of the Services requires us to travel within the United Kingdom the cost of all travel, accommodation and subsistence incurred by our employees or any third-party contractor in the performance of the Services shall be paid by you in addition to the Price unless expressly stated otherwise. Where travel is necessary outside the United Kingdom, the cost of obtaining all necessary entry residence work and exit documents shall be paid by you in addition to the Price.

4.6 We reserve the right to raise an additional charge on you in the event that the assumptions specified in the quotations prove to be incorrect for whatever reason, or if you change the specified work and, in particular, we reserve the right to increase the Price if work has to be performed outside normal working hours or if the nature, extent or scope of the Services is altered in any way during the course of our providing the Services. We also reserve the right to increase the Price if delays are caused or if we have to carry out extra work as a result of anything which you may do or fail to do.

5. YOUR OBLIGATIONS TO US

5.1 You must promptly provide us with all information and assistance that we may reasonably require in connection with the performance of the Services.

5.2 Where the Services are to be provided at your premises, or anywhere other than at our premises, you are to make available free of charge all gas, electricity, heating and water required by us together with such facilities for us and our employees to use and any third party contractors as shall be required in order to enable us to comply with relevant legislation concerning their health, safety and well-being and to perform the Services.

5.3 You are to carry out any preparatory works specified in our quotation in good time to enable the Services to be supplied promptly and effectively.

5.4 You are to disclose to us the presence of any hazardous machinery or substance in any place where we are to provide the Services and to give us full information as to the nature of any such hazard. If you do not do so we may refuse to perform or complete the Service, without being under any further obligation to you.

5.5 You are to obtain any necessary consents or permits required from any local or governmental authority to enable the Services to be carried out.

5.6 You shall inform us in writing, in a concise and comprehensive manner, of all the technical, organizational and security measures you require us to perform to protect any personal data to be processed by us, as a data processor, on your behalf, as a data controller. We shall only be required to carry out such informed measures to meet our data processing obligations to you pursuant to a contract between us, regardless of whether there are further actions required by law pursuant to data protection regulations.

5.7 Where we have an ongoing duty to provide repairs to, or other services for, your systems (as specifically agreed between us to be part of the Services in writing) you will ensure that you do not change the hardware which you use to operate the system, or change, upgrade or update any software which is part of or connects to any of your systems, without first contacting us. Failure to comply with that, may mean that your system will not work or will be affected in unknown ways and may mean that we cannot assist you as part of any agreed fixed price obligations to service your systems and we may have to charge an additional fee.

6 INTELLECTUAL PROPERTY RIGHTS

6.1 The Intellectual Property Rights shall remain our property unless and to the extent stated in the quotation. Provided that you comply with all your obligations as to payment and otherwise, we grant to you a personal non-exclusive licence to use the Intellectual Property Rights in the normal course of your business but not further or otherwise. You may not grant any sub-licence nor transfer the benefit of the licence hereby granted without our prior written consent.

6.2 Copyright in all drawings, reports, calculations and other documents provided by us in connection with the Services belongs to us. You may not make copies of the same or any part of them without our agreement which must be in writing to be valid.

6.3 If the quotation expressly states that Intellectual Property Rights in connection with the Services or any part thereof are to become your property, for the avoidance of doubt, this will exclude all background intellectual property rights, being all rights in code which we regularly use for our customers (such as APIs or parts of them) and rights in any software which is either open source software or proprietary software which is used in building or facilitating software solutions (e.g. Microsoft software, or software relating to servers, etc). You will also grant to us a non-exclusive perpetual non-cancellable royalty free licence to use the same for all purposes connected with our business without limit of time and in particular to use the Intellectual Property Rights and any development thereof which we may undertake in connection with the Goods and/or Services supplied by us to our other customers.

6.4 Unless we have told you otherwise to the best of our knowledge and belief neither the supply of the Goods nor the supply of the Services to you will result in the infringement of any third party's Intellectual Property Rights. In the event however that any claim is made against you by any third party for infringement of such rights as a result of your use of any Goods or Services supplied by us, we reserve the right at our own expense to conduct any ensuing litigation and all negotiations for a settlement of the claim. Should we exercise this right, we will bear the cost of any payments (either by way of a lump sum or a continuing royalty payment) made in settlement or as a result of an award in a judgement against us in the event of litigation.

6.5 We will grant you the benefit of Condition 6.4, only if you give to us the earliest possible notice in writing of

any such claim being made or action threatened or brought against you, you make no admission of liability and take no other action in connection therewith, you permit us to have the conduct of the claim and give us all reasonable information, co-operation and assistance in relation to the conduct of the claim (including lending your name to proceedings). In addition, if it is made a condition of any settlement made by us or judgement awarded against you, you will return or destroy as applicable all infringing Goods or documents still under your control subject to a refund by us of any payment for such goods already made (less a reasonable allowance for depreciation).

6.6 The provisions of Condition 6.4 shall not apply to any infringement caused by us in following a design or instruction furnished by you or given to you nor to any use of the Goods or Services in a manner or for a purpose which shall have been specifically prohibited in writing by us nor to any infringement which is due to the use of such Goods or Services in association or combination with any other product.

6.7 You warrant that any design or instruction furnished or given by you shall not be such as will cause us to infringe any intellectual property rights.

6.8 The provisions set out in Condition 6.4 above state our entire liability to you and your sole and exclusive remedies against us in connection with claims based on or resulting from the infringement of intellectual property rights of any kind whatsoever of any third party.

7. CONFIDENTIALITY

Both of us are to keep confidential and shall not without the prior consent in writing of the other disclose to any third party any technical or commercial information which may have been acquired from the other as a result of discussions, negotiations and other communications between us relating to the Services and/or the Goods. These obligations continue after termination of an agreement subject to these Conditions however caused.

8. RELIANCE ON SKILL AND JUDGEMENT

You acknowledge that you rely on your own skill and judgement in determining the suitability of the Goods and/or the Services for any particular purpose. You are alone responsible for ensuring that any performance requirement indicated in the quotation is sufficient and suitable for your purpose save in so far as we have expressly agreed in writing that you may rely on our advice.

9. LIABILITIES

9.1 We do not accept liability in any circumstances and whether in contract, tort or on any other basis whatsoever and however caused for:

9.1.1 Any loss of profit, business, contracts, revenues or anticipated savings;

9.1.2 Any special, indirect or consequential damage of any nature whatsoever'

9.1.3 Any loss, liability or other damage, in relation to any breach or non-performance of any

data protection laws, especially given your obligations pursuant to Condition 5.6.

9.2 Subject to condition 9.1 and to the overall limitations on liability set out below we will accept liability to you for any loss and/or damage arising by reason of negligence on the part of our employees or any breach on our part of our contractual obligations to you.

9.3 Our total liability to you whether in contract, tort (including negligence or breach of statutory duty), breach of third-party rights, or otherwise howsoever arising, shall not in any event exceed the level of insurance that we have in relation to our business at any particular time.

9.4 In so far as we are able to do so and at your expense, we will assign to you the benefit of any warranties and conditions relating to quality, suitability, fitness for purpose or quiet possession contained in any contract which we may have with any third party for the supply of any component included within the Goods.

9.5 You accept responsibility for any inaccuracies, errors or omissions on your part in relation to instructions given by you or in any data, drawings, calculations, specifications, information or material supplied to us for the purpose of enabling us to make the Goods and/or perform the Services.

9.6 We will not accept liability for any loss arising as a result of delay howsoever caused.

9.7 Termination of an agreement subject to these Conditions for whatever reason shall not affect any rights or liabilities which have already accrued at the time of termination.

10 INDEMNITY

10.1 We require you to indemnify us from and against all claims, actions, demands, proceedings, damages, costs, charges and expenses arising out of or in connection with the supply of the Goods and/or Services to you:

- (a) To the extent that any such claim etc shall exceed the limit of liability specified in Condition 9.3 above;
- (b) Where any such claim or loss arises as a result of any breach on your part of any of your obligations under these Conditions;
- (c) In any event where such claims or actions are brought or threatened against us by a third party as a result of your use of the Goods and/or the Services in the manufacture, supply or distribution of any other goods or in the provision of a service to a third party;
- (d) In any event where such claims or actions are brought or threatened against us by a third party or any governmental body relating to any breach or non-performance of any data protection laws.

10.2 Neither us nor you shall be liable for any loss or damage arising from any occurrence unless a claim is formally notified in writing before the expiry of two years from the date of our quotation.

11 TIME AND FORCE MAJEURE

11.1 Unless expressly so stipulated by you and agreed in writing by us, time for performance of the Services shall not be of the essence.

11.2 We will not in any event be responsible for any delay in or failure to perform the Services or to supply the Goods which is caused by factors beyond our reasonable control which shall include but not be limited to acts of God, acts of governmental or any other lawful authority, strike, war, riot, civil commotion, flood, fire, explosion, epidemic, trade embargo or any other acts or omissions on the part of any third party or sub-contractor or any failure of electricity or other fuel or equipment.

12 ASSIGNMENT AND AGREEMENT

12.1 You may not assign an agreement subject to these Conditions in whole or in part without our prior written consent; though we may assign the same without your consent. You, our assignees, our successors and we are the only persons who shall have any rights pursuant to such agreements.

12.2 The quotation and these Conditions sets out the entire agreement and understanding of both of us relating to the subject matter thereof and supercedes all prior discussions between us and all prior memoranda of intent or understanding and all previous documentation.

13 RETENTION OF TITLE AND RISK

13.1 Where Goods are to be supplied to you, they will remain our property until you have discharged all your obligations pursuant to all contracts between us and you and all other debts owed to us by you.

13.2 Whilst the Goods remain in our ownership you may not sell or permit any lien to be created over them and you shall take proper care of the Goods, insure them appropriately and adequately and keep them separate from your own goods and clearly identify them as belonging to us.

13.3 The Goods shall be at your risk as from the time they leave our premises and whether or not delivered to you or to any agent on your or our behalf.

14 WAIVER

If either of us shall positively waive or delay or not insist in any instance on full compliance by the other with any of these terms that shall not prevent him from subsequently requiring such compliance in respect of that instance by the other party (subject always to reasonable notice in the case of a positive waiver).

15 GOVERNING LAW AND DISPUTES

The construction, validity and performance of an agreement subject to these Conditions shall be governed in all respects by English law and we each agree to submit to the non-exclusive jurisdiction of the English courts.