

ONYX BUSINESS SYSTEMS LTD TERMS AND CONDITIONS OF BUSINESS

1. DEFINITIONS:

- 1.1 Conditions means the standard terms and conditions set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Customer and Onyx
- 1.2 Contract means the contract for the purchase and sale of the Goods and/or the provision of the Services
- 1.3 Customer means the person who purchases the Goods from Onyx or whose request for the provisions of the Services is accepted by Onyx
- 1.4 Goods means the goods particulars of which are set out overleaf or otherwise specified in writing to the Customer which Onyx is to supply and/or install (whether or not in performance of the Services as defined below) in accordance with these Conditions
- 1.5 Onyx means the supplier of Goods or provider of the Services whose details are set out overleaf
- 1.6 Price means Onyx's quoted price of the Goods and/or Services (or where no price has been quoted a reasonable price) excluding VAT
- 1.7 Services means the services particulars of which are set out overleaf or otherwise specified in writing to the Customer which Onyx is to carry out in accordance with these Conditions
- 1.8 Software Licence means any software licence of Onyx or manufacturer of the Goods and Services comprised in the Services and as provided to the Customer

2. CONDITIONS APPLICABLE:

- 2.1 Onyx shall sell and the Customer shall purchase the Goods and/or Onyx shall supply the Services in accordance with the terms agreed orally or in writing with the Customer subject in either case to these Conditions and the Software Licence which shall govern the Contract to the exclusion of any other terms and conditions
- 2.2 No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of Onyx and the Customer
- 2.3 Any representations made by Onyx's employees or agents concerning the Goods or Services shall not be incorporated into the Contract unless confirmed by Onyx in writing and in entering into the Contract the Customer acknowledges that it does not rely on and waives any claim for breach of any such representations which are not so confirmed
- 2.4 Any advice or recommendation given by Onyx or its employees or agents to the Customer or its employees or agents as to the storage application or use of the Goods which is not confirmed in writing by Onyx is followed or acted upon entirely at the Customer's own risk and accordingly Onyx shall not be liable for any such advice or any recommendation which is not so confirmed
- 2.5 Any typographical clerical or other error or omission in any sales literature quotation price list acceptance of offer invoice or other documentation or information issued by Onyx shall be subject to correction without any liability on the part of Onyx unless such correction fundamentally changes the Customer's obligations under the Contract to the Customer's detriment in which case the Customer shall be entitled to cancel the Contract within seven (7) days of notification by Onyx of such a fundamental change
- 2.6 Any quotation given by Onyx may be withdrawn at any time prior to acceptance by the Customer and in any event shall lapse after seven (7) days

3. ORDERS AND SPECIFICATIONS:

- 3.1 No order shall be deemed to be accepted by Onyx unless accepted in writing by Onyx's authorised representative
- 3.2 Onyx reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or (where the Goods are to be supplied or installed to Onyx's specification) which do not materially affect their quality or performance
- 3.3 Save as otherwise provided no order which has been accepted by Onyx may be cancelled by the Customer except with the agreement in writing of Onyx and on terms that the Customer shall at Onyx's discretion either:-
- (a) indemnify Onyx in full against all loss (including loss of profit costs including the cost of all labour and materials used) damages charges and expenses incurred by Onyx as a result of cancellation or
- (b) pay a handling charge on the Goods equal to ten per cent (10%) of the Price
- 3.4 Subject to clause 3.2 herein where Goods are delivered by Onyx to the Customer which do not comply with those ordered then Onyx will give a full credit for the Price provided that they are returned in good condition to Onyx within seven (7) days of delivery to the Customer

4. PRICE:

- 4.1 If at any time before delivery/installation of the Goods and/or performance of the Services Onyx deems it necessary to increase the Price to give effect to any increase in the cost to Onyx which is due to any factor beyond the control of Onyx (other than for any increase consequent to a change to the prevailing rate of VAT) Onyx shall have the right to give written notice of such increase to the Customer increasing the Price and in such instance the Customer shall have the right to cancel the Contract within seven (7) days of the receipt by it of such notice failing which such increase shall be added to the Price
- 4.2 Notwithstanding the provisions of clause 4.1 above any increase in the cost to Onyx necessitating an increase in the Price which is a result of any change in specification of the Goods and/or Services which is requested by the Customer or as a result of any delay caused by any instructions of the Customer or failure of the Customer to give Onyx adequate information or instructions shall not entitle the Customer to cancel the Contract on receipt of a written notice of such increase in the Price

5. PAYMENT:

- 5.1 Subject to any special terms agreed in writing between Onyx and the Customer Onyx shall be entitled to invoice the Customer for the Price and VAT at the rate prevailing on the date of Onyx's invoice before on or at any time after delivery of the Goods/performance of the Services
- 5.2 The Customer shall pay the Price and VAT upon either receipt of Onyx's invoice or (if specifically notified by Onyx) within fourteen (14) days of the date of the said invoice (the "Due Date"). Time of payment of the Price shall be of the essence of the Contract
- 5.3 If the Customer fails to make payment on the Due Date then without prejudice to any other right or remedy available to it the Onyx shall be entitled to:-
- (a) cancel the Contract and/or suspend any further deliveries of Goods to the Customer or performance of the Services and
- (b) charge the Customer interest (before and after any judgment) on the amount unpaid at the rate of three per cent (3%) per annum above Barclays 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. DELIVERY/PERFORMANCE:

- 6.1 Any dates quoted for delivery of the Goods or performance of the Services are approximate only and the Onyx shall not be liable for any reasonable delay in delivery/performance and time for delivery/performance shall not be of the essence unless previously agreed by the Onyx in writing
- 6.2 If the Customer fails to take delivery of the Goods or fails to give Onyx adequate delivery instructions at the time stated for delivery (otherwise than by reason of the cause beyond the Customer's reasonable control or by reason of Onyx's fault) then without prejudice to any other right or remedy available to it Onyx may:-
- (a) store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) or storage or

- (b) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account the Customer for the excess over the Price or charge the Customer for any shortfall below the Price

7. RISK AND PROPERTY:

- 7.1 Risk of damage to or loss of the Goods shall pass to the Customer at the time of delivery or if the Customer fails to take delivery of the Goods at the time when Onyx has tendered delivery of the Goods
- 7.2 Notwithstanding delivery and the passing of risk in the Goods property in the Goods shall not pass to the Customer until Onyx has received in cash or cleared funds payment in full the Price and VAT and for all other Goods agreed to be sold and Services provided by Onyx to the Customer for which payment is then due and until such time as the property in the Goods passes to it the Customer shall hold the Goods as Onyx's fiduciary agent and bailee and shall keep the same separate from those of the Customer and third parties and properly stored and protected and insured and identified as Onyx's property
- 7.3 Until such time as the property in the Goods passes to the Customer Onyx shall be entitled at any time to require the Customer to deliver up the Goods to Onyx and if the Customer fails to do so forthwith to enter upon any premises of the Customer or any third party where Goods are stored and repossess the Goods

8. WARRANTIES AND LIABILITIES:

- 8.1 Onyx warrants that the Goods and/or Services will be free from defects and workmanship under normal use for a period of 90 days
- 8.2 Any warranty given by Onyx in respect of the Goods supplied or the performance of the Services shall be subject to the following conditions:-
- (a) in the event of any conflict between the provisions of these Conditions and those of the Software Licence the provisions of the Software Licence shall prevail
- (b) Onyx shall be under no liability in respect of any defect in the Goods arising from any drawing design or specification supplied by the Customer
- (c) Onyx shall be under no liability in respect of any defects arising from fair wear and tear the Customer's negligence abnormal working conditions failure to follow Onyx's instructions (whether oral or in writing) misuse or alteration or repair of the Goods without Onyx's approval
- (d) Onyx shall be under no liability under any warranty condition or guarantee if the Price and VAT has not been paid by the Due Date
- (e) no warranty given by Onyx extends to Goods not manufactured by Onyx in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to Onyx
- (f) save as otherwise provided Onyx shall be under no liability hereunder in circumstances where the performance or functionality of any software comprised in the Goods and/or Services is affected by dates prior to during and after the year 2000
- 8.3 The Customer acknowledges that the Goods have not been manufactured or prepared to meet the Customer's individual requirements and that it is not within Onyx's control how and for what purpose the Goods are used by the Customer and that it is the Customer's responsibility to ensure that the facilities and functions of the Goods meet the Customer's requirements
- 8.4 Except in respect of death or personal injury caused by Onyx's negligence Onyx shall not be liable to the Customer by reason of any representation of any implied warranty condition or other term or any duty at common law or under the express terms of the Contract for any consequential loss or damage (whether for loss of profit or otherwise) costs expenses or other claims through consequential compensation whatsoever (and whether caused by negligence of Onyx its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods (or their use by the Customer) and Services except as expressly provided in these Conditions
- 8.5 Any liability of Onyx hereunder (except in respect of death or personal injury caused by Onyx's negligence) for any delay in performing or any failure to perform any of Onyx's obligations in relation to the Goods or Services shall be limited to the excess (if any) of the cost to the Customer in the cheapest available market of similar Goods or Services to replace those not delivered/performed over the Price

9. INTELLECTUAL PROPERTY:

- 9.1 The Customer acknowledges that any software comprised in the Goods and/or Services is subject to restrictions of use as set out in the Software Licence and the supply of Goods or provision of Services hereunder is subject to such terms contained in the Software Licence
- 9.2 The Customer will not acquire any title copyright or other proprietary rights in the Goods including any materials or documentation comprised in or provided with the Goods and/or Services

10. TERMINATION:

- 10.1 Without Prejudice to any other right or remedy available to it Onyx shall be entitled to cancel the Contract or suspend any further deliveries of Goods or provisions of Services under the Contract without any liability on the part of Onyx to the Customer in the cheapest available market of similar Goods or Services to replace those not delivered/performed over the Price
- (a) the Customer makes any voluntary arrangements with its creditors or becomes subject to any Administration Order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstructions)
- (b) an encumbrancer takes possession or a Receiver is appointed of any of the property or assets of the Customer
- (c) if the Customer (if not a consumer within the meaning of the Unfair Contract Terms Act 1977) ceases or threatens to cease to carry on the business
- (d) the Customer breaches any of the Conditions
- (e) Onyx reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly

11. FORCE MAJEURE:

- Neither party shall be liable for any delay in performing or failure to perform (other than a payment obligation) due to any act of god war strike lock-out industrial action fire flood drought tempest or any other event beyond the reasonable control of either party. Such delay or failure will not constitute a breach of this Contract and time for the performance of the affected obligations will be extended by such period as is reasonable

12. GENERAL:

- 12.1 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
- 12.2 The headings in these Conditions are for convenience only and shall not affect their interpretation
- 12.3 No waiver by Onyx of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision
- No failure of Onyx to exercise any power given to it or to insist upon strict compliance by the Customer with any obligation hereunder and no custom or practice of the parties at variance with the terms hereof shall constitute any waiver of any of Onyx's rights under this Agreement
- If any provisions 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 thereby
- The Contract shall be governed by the laws of England and subject to the jurisdiction of the English Courts.