

## **TERMS AND CONDITIONS OF SALE AND SERVICE**

### **1. INTERPRETATION**

In these Terms and Conditions the following expressions will have the following meanings unless inconsistent with the context:

**“Buyer”**: the person(s), firm or company whose order for the Goods and Services are accepted by the Contractor.

**“Contract”**: any contract between the Contractor and the Buyer for the sale and purchase of the Goods or supply of the Services formed in accordance with Condition 2.

**“Goods”**: any Goods which the Contractor supplies to the Buyer (including any of them or any part of them) under a Contract.

**“Terms and Conditions”**: the standard terms and conditions of sale set out in this document together with any special terms agreed in writing between the Buyer and the Contractor and attached to these terms and conditions.

**“Contractor”**: CloudHost Limited

### **2. FORMATION AND INCORPORATION**

2.1 Subject to any variation under Condition 11.1, the Contract will be upon these Terms and Conditions, to the exclusion of all other terms and conditions and all previous oral or written representations including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order or similar document, whether or not such document is referred to in the Contract.

2.2 Each order or acceptance of a quotation for Goods or Services will be deemed to be an offer by the Buyer to purchase Goods or Services upon these Terms and Conditions. The Contract is formed when the order is accepted by the Contractor. No contract will come into existence until the acceptance, either orally or in writing, of an order by the Contractor.

2.3 Any quotation is valid for a period of thirty (30) days only from its date, provided the Contractor has not previously withdrawn it.

2.4 The Contractor may cancel the Contract at any time prior to delivery or performance.

### **3. DESCRIPTION**

The quantity and description of the Goods and/or Services will be as set out in the order form/specification. All samples, drawings, descriptive matter, specifications and advertising issued by the Contractor shall remain the property of the Contractor. They will not form part of the Contract and this is not a sale by sample.

### **4. PRICE AND PAYMENT**

4.1 The price for the Goods and/or Services will be the price set out in the Contractor's order form current at the date of acceptance of order and is exclusive of any costs of packaging and carriage, VAT and any other applicable sales tax or duty.

4.2 The Contractor may invoice the Buyer for the Goods on or at any time after delivery, or the Services on or at any time after performance commences, and payment is due within thirty (30) days of service of such invoice, or upon termination of the Contract, whichever occurs first. The Contractor may, in its absolute discretion, require payment to be made before the provision of any Goods or Services by the Contractor.

4.3 All payments to be made by the Buyer under the Contract will be made in full without any set-off, restriction or condition and without any deduction for or on account of any counterclaim.

4.4 The Contractor may at any time suspend the provision of the Goods or the Services if the Buyer is late in making any payment due to the Contractor. If any sum payable under the Contract is not paid when due then, without prejudice to the Contractor's other rights under the Contract, the sum will bear interest from the due date until payment is made in full, both before and after any judgement, at 3% per annum over Barclays Bankplc base rate from time to time and the Contractor will be entitled to suspend deliveries of the Goods or performance of the Services until the outstanding amount has been received.

## **5. DELIVERY**

5.1 The Goods shall be delivered and the Services will be performed at the location agreed between the Buyer and the Contractor and as specified on the order form or at such location as otherwise agreed in writing between the Contractor and the Buyer.

5.2 The Contractor will use reasonable endeavours to deliver or perform each of the Buyer's orders for the Goods and/or Services within the time agreed when the Buyer places an order and, if no time is agreed, then within a reasonable time, but the time of delivery or performance will not be of the essence.

5.3 The contractor uses Next Day Delivery services provided by national hauliers. Our next day service is only applicable when the order is placed before 3PM on a UK Working Day. All orders placed after 3PM will tried to be delivered next day however this can't be guaranteed.

## **6. RISK/TITLE**

6.1 All Goods will remain the property of the Contractor until the price of such Goods has been paid in full (in cash or cleared funds).

6.2 Risk in the Goods will pass to the Buyer from the date of delivery.

6.3 The Buyer's right to possession will terminate immediately upon the occurrence of an event which would allow the Contractor to terminate the Contract under Condition 10.1.

6.4 The Buyer grants the Contactor, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

## **7. LIABILITY OF THE CONTRACTOR**

7.1 This Condition 7 is in addition to and does not affect a Buyer's rights in relation to defective Goods or Services given to Buyers by law.

7.2 The Contractor does not exclude its liability (if any) to the Buyer for any matter which it would be illegal for the Contractor to exclude (or to attempt to exclude) its liability.

7.3 Except as provided in Conditions 7.1 and 7.2, the Contractor will be under no liability to the Buyer whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any injury, death, damage and in no event shall Contractor be liable for any of the following losses or damage (whether such losses or damage are foreseen, foreseeable, known or otherwise and whether or not the Buyer is advised of the possibility of loss, liability damage or expense):

- 7.3.1 loss of revenue;
- 7.3.2 loss of actual or anticipated profits (including for loss of profits on contracts);
- 7.3.3 loss of the use of money;
- 7.3.4 loss of anticipated savings;
- 7.3.5 loss of business;
- 7.3.6 loss of operating time or loss of use;
- 7.3.7 loss of opportunity;
- 7.3.8 loss of goodwill;
- 7.3.9 loss of reputation;
- 7.3.10 loss of, damage to or corruption of data; or
- 7.3.11 any indirect or consequential loss or damage howsoever caused.

7.4 Except as set out in Conditions 5.2 and 7.1, the Contractor hereby excludes to the fullest extent permissible in law, all conditions, warranties and stipulations, express (other than those set out in the Contract) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Buyer. Any liability that arises to the Contractor shall be limited to the Contract price.

7.5 Buyer agrees to indemnify, keep indemnified and hold harmless the Contractor from and against all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include, without limitation pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings or legal costs (on a full indemnity basis) and judgements which the Contractor incurs or suffers as a consequence of a direct or indirect breach of negligent performance or failure or delay in performance by the Buyer of the terms of the Contract.

## **8. FORCE MAJEURE**

The Contractor will not be liable to the Buyer for any failure or delay or for the consequences of any failure or delay in performance of the Contract, if it is due to any event beyond the reasonable control and contemplation of the Contractor including, without limitation, acts of God, war, industrial disputes, protests, fire, tempest, explosion, act of terrorism and national emergencies and the Contractor will be entitled to reasonable extension of time for performing such obligations.

## **9. INTELLECTUAL PROPERTY**

9.1 All intellectual property rights in the Goods belong to the Contractor or its licensors absolutely. All intellectual property rights created, developed or discovered by the Contractor (whether alone or with any other person including the Buyer) in the provision of the Goods or Services shall belong to the Contractor absolutely.

9.2 The Buyer shall notify the Contractor immediately if the Buyer becomes aware of any claim made against the Buyer that normal use or possession of the Goods or Services infringes or is alleged to infringe the intellectual property rights of any third party.

9.3 The buyer hereby irrevocably and unconditionally waives in favour of the Contractor any and all moral rights conferred on the Buyer by virtue of the Copyright Designs and Patents Act 1988 for any design or copyright work.

## **10. TERMINATION**

10.1 The Contractor may by written notice terminate the Contract immediately if the Buyer is in material breach of the Contract or enters into insolvency, bankruptcy, any arrangement with its creditors or any other arrangement or situation which has a like effect. Failure to pay any sums due in accordance with Condition 4.1 is a material breach of the terms of the Contract which is not capable of remedy.

10.2 The termination of the Contract howsoever arising is without prejudice to the rights, duties and liability of either the Buyer or the Contractor accrued prior to termination. The conditions which expressly or impliedly have effect after termination will continue to be in force notwithstanding termination.

10.3 The Contractor may terminate this Contract for convenience upon giving the Buyer four (4) week's notice thereof without penalty.

## **11. Returns, Refunds and Cancellations**

11.1 If any product which develops a fault within the manufacturer's warranty period CloudHost Limited will provide details on how to arrange direct replacement/repair with the manufacturer. For any fault developed outside the manufacturer's warranty or extended warranty the contractor will not accept or be liable for replacement.

11.2 You can request a refund for any product that arrives to the buyer faulty within 14 days of delivery. The buyer will be required to return the goods to the contractor at their expense unless otherwise agreed with the contractor and their RMA procedure will be followed.

The buyer can request a refund of any goods purchased which remain in original packaging and have not been opened within 7 days of delivery.

11.3 The buyer can cancel any order within 7 days, the goods or services should not be used, opened or marked in anyway which prevents the contractor from re-stocking the goods.

## **12. GENERAL**

12.1 Save as set out in the Contract, these Terms and Conditions may only be varied or amended in writing and signed by the Contractor.

12.2 The Contract is personal to the Buyer who may not assign, delegate, license, hold on trust or sub-contract all or any of its rights or obligations under the Contract without the Contractor's prior written consent.

12.3 The Contract contains all the terms which the Contractor and the Buyer have agreed in relation to the Goods and/or Services and supersedes any prior written or oral agreements, representations or understandings between the parties relating to such Goods and/or Services. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Contractor which is not set out in the Contract. Nothing in this Condition 11.3 will exclude any liability which one party would otherwise have to the other party in respect of any statements made fraudulently.

12.4 The parties to the Contract do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

12.5 For the avoidance of doubt should there be any conflict between the terms and conditions of sale set out in this document and any special terms attached to them, then the special terms shall prevail.

12.6 The formation, existence, construction, performance, validity and all aspects whatsoever of the Contract or of any term of the Contract will be governed by English law. The English courts will have exclusive jurisdiction to settle any dispute which may arise out of, or in connection with the Contract. The parties agree to submit to that jurisdiction.