

# STANDARD TERMS AND CONDITIONS OF TRADING

# Standard Terms and Conditions of Trading

The following terms and conditions apply to all Goods sold or to be sold, Software licensed or to be licensed, and/or Services provided or to be provided to the Customer. All definitions are given in Annex 1 to this document.

## 1. General

- 1.1. These terms and conditions (hereinafter called "the Terms") apply to all Agreements entered into between Matrix and the Customer for the supply of Goods and Services to the Customer.
- 1.2. The Customer shall be deemed to have read, understood, and agreed to the Terms before entering into the Contract with Matrix; All Orders are accepted on the Terms, which supersede ALL others of whatever nature, unless expressly agreed otherwise in writing Matrix.
- 1.3. These Terms may only be amended, or varied with Matrix's agreement in writing. The Parties agree that these Terms will prevail notwithstanding any conflicting or additional terms or any Orders or other notifications submitted by the Customer.
- 1.4. Words of a technical nature used in these Terms will (unless inconsistent with the context) be construed in accordance with general trade use in the computer industry in the United Kingdom.
- 1.5. Headings in these Terms are for convenience only and have no effect on the interpretation.
- 1.6. All references to the plural herein shall also mean the singular and to the singular shall also mean the plural unless the context requires otherwise.
- 1.7. Failure by either party to exercise or enforce any rights, or the giving of any forbearance, delay or indulgence, will not be construed as a waiver of its rights under these Terms or otherwise nor will any single or partial exercise thereof preclude any further or subsequent exercise.
- 1.8. For the purposes of the Terms, communications made between Matrix and the Customer by electronic mail shall be regarded as made in writing and signed by the party sending the electronic mail communication.
- 1.9. Matrix employs an online ordering process via a portal on [www.orderporter.com](http://www.orderporter.com) for the purposes on these Terms online acceptance of a Quotation by the Customer shall be regarded as an Order made in writing and signed by the Customer.
- 1.10. Matrix reserves the right to correct any clerical or typographical errors made by its employees at any time.
- 1.11. Any reference to person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality); and
- 1.12. Any reference to company includes any company, corporation or other body corporate, wherever and however
- 1.13. The parties hereby agree that a person who is not a party to this agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 (as amended, modified or supplemented from time to time) to enforce any of these Terms.

## 2. Software

- 2.1. All software, whether supplied, installed or implemented is provided within the terms and conditions and licence of the software provider.
- 2.2. If the software comprised in the Goods is not owned by Matrix, then the Customer may be required to enter into an end-user licence agreement with the owner of the software concerned.
- 2.3. If any software has to any extent been written or developed by Matrix then subject to Clause 2.2 above, Matrix hereby grants a non-exclusive, non-transferable licence for the use of such software by the Customer for the duration of this Contract and all copies of such software are the property of Matrix and notwithstanding Clause 11 no title or ownership thereof will be transferred to the Customer.
- 2.4. Where software has been written or developed by Matrix for the Customer, the Customer acknowledges that such software may only be compatible with the current versions of other software and/or hardware and Matrix provides no guarantee that it will be compatible with later versions of other software and/or hardware. For the avoidance of doubt, unless otherwise agreed between the parties in writing, Matrix is under no obligation to supply the Customer with any updates or add-ons to the software.

## 3. Specification

- 3.1. The description of any Goods contained in any order form, invoice, descriptive matter, specifications, catalogue or advertising material published or issued by Matrix is for identification only and the use of such description will not constitute a sale by description. Any typographical or other error or omission in any such literature or any

other document issued or provided by Matrix may be corrected by Matrix without any liability on the part of Matrix.

- 3.2. Matrix reserve the right to supply Goods which differ from the specifications agreed between the parties and/or to modify any specifications in respect of Services provided that this does not materially affect the performance of the Goods or Services.

## 4. Prices

- 4.1. Unless otherwise stated in writing Quotations are valid for 5 days from the date of issue and are exclusive of VAT and any other relevant taxes which are payable by the Customer in addition.
- 4.2. All waiting time spent by any employees or agents of Matrix (which includes any time which had been allocated to a Customer by Matrix and which is not utilised by such Customer for any of the reasons set out in this clause) as a result of any delay, variation or failure by the Customer to comply with these Terms (which for these purposes includes any delays or postponements by the Customer of any installation dates specified by Matrix, of dates of scheduled service visits or otherwise) will be payable by the Customer to Matrix at Matrix's then current rates.
- 4.3. The Customer shall pay any chargeable expenses and disbursements which are incurred by Matrix personnel on behalf of the Customer including but not limited to hotels, subsistence, travelling, mileage at 40p per mile, supplies, telephone charges, copying charges and the cost of any materials or services reasonably and properly provided by third parties required by Matrix for the supply of services.
- 4.4. Unless otherwise expressly stated to be firm for a specified period, the prices are subject to increase or decrease by the Company, to take account of (but not limited to):-
  - 4.4.1. the Customer or Matrix altering Specifications or instructions after the date of Quotation.
  - 4.4.2. should there be any increase in the cost to Matrix of purchasing any Goods or Equipment by reason of any foreign exchange fluctuations, alterations in any taxes or duties, variations in the costs of raw materials or components or labour or transport or by any other reason or cause whatsoever.
- 4.5. The Customer will pay all transport costs incurred by Matrix for delivery of the Goods to the Customer.
- 4.6. Any Quotation may be withdrawn by the Company at any time before receipt of a confirmed Order from the Customer.
- 4.7. All Quotations will be deemed to be withdrawn if no confirmed Order is received within 15 days from the date of Quotation, unless otherwise stated in writing by Matrix at the time of quoting.
- 4.8. Matrix will notify the Customer, in writing, of any changes to consultancy or service rates no less than 30 days prior to increase.
- 4.9. All price queries must be made within 5 working days of receipt of the Invoice.

## 5. Payment

- 5.1. If no payment date(s) has been agreed in writing in accordance with these Terms then payment by the Customer will be made within 14 days after the date of Matrix's invoice.
- 5.2. If any payments from the Customer under these Terms are payable by instalments detailed in the Quotation or Scope of Service, the Customer will pay such instalments in advance by direct debit or such other method as Matrix may agree, at the intervals agreed.
- 5.3. If the Customer fails to make any payment due to Matrix (whether under these Terms or otherwise) on its due date, then Matrix may (without prejudice to any other remedy) cancel the Contract or suspend any further performance of any obligations by Matrix to the Customer or appropriate any money received from the Customer against such sums as Matrix may determine (notwithstanding any instructions from the Customer). For the avoidance of doubt, Matrix will be entitled to suspend the performance of Services in the event that there are any sums owing by the Customer in respect of any other Goods and/or Services provided by or on behalf of Matrix to the Customer.
- 5.4. All fees remain payable where we suspend the Services in accordance with Clause 5.3 above.
- 5.5. All payments due to Matrix under these Terms shall be paid in full without any set off, deduction, counterclaim or withholding of any sum for whatever reason.

- 5.6. Matrix reserves the right to charge interest on the amount of any delayed payment at the rate of 4% over the base rate of HSBC Bank Plc from time to time per calendar month or part thereof on the outstanding amount until payment has been made in full.

## 6. Customer's Specification

- 6.1. Where Goods are made or modified to the Customer's own Specification, instruction or design, the Customer undertakes full responsibility for the suitability and accuracy of the Specification, instructions or design and undertakes to indemnify Matrix and keep Matrix indemnified on a continuing basis from and against any infringement of any patent, registered design, trade mark, trade name or copyright and all loss, damage or expense which it may incur by reason of such infringement as aforesaid.

## 7. Estimates

- 7.1. Work undertaken on a Time and Materials agreement will be charged on the basis on the actual time and materials used taken to perform the work.
- 7.2. When estimates are provided, whether verbal or in writing, this is purely to assist with decision-making and budgeting. Estimates will be based on Matrix's experience of performing similar tasks and projects. However, when work starts we may need to revise our original estimate. We will tell you as soon as we can if the work will be more complicated or take longer than we originally thought
- 7.3. Any estimate provided shall not be construed as a fixed price or a cap on the price which will be charged.

## 8. Orders/Delivery/Collection

- 8.1. No Order shall generally be accepted by Matrix unless first confirmed by the Customer in writing, by e-mail, or by facsimile. In the event that the Customer does not issue a purchase order to Matrix then Matrix shall be permitted to rely on conversation relating to the Order itself or any quotation relative thereto.
- 8.2. Where Goods are to be delivered to the Customer, such Goods will be delivered to the ground floor of the location agreed in the Contract. Unless it is otherwise agreed in writing by Matrix, such Goods shall be delivered by any means chosen by Matrix.
- 8.3. Matrix will make every effort to avoid delay but is under no responsibility to meet any specific delivery dates. Accordingly, no liability will be accepted for any direct or indirect loss which may be caused by delayed delivery whether brought about by a factor beyond the control of Matrix or not.
- 8.4. Matrix shall be entitled to deliver the Goods in one or more consignments unless otherwise expressly agreed.
- 8.5. It is the Customer's responsibility to inspect Goods immediately upon delivery.
- 8.6. The Customer shall notify Matrix within 3 working days from date of delivery, any issue with the Goods which may lead to the Customer to allege that the Goods are not in accordance with the Contract or are defective in material or workmanship. If the Customer fails to give such notice the Goods shall be conclusively presumed to be in all respects in accordance with the Contract and free from any defects, which would be apparent upon reasonable examination of the Goods and the Customer shall be deemed to have accepted the Goods accordingly. In the event the Customer establishes to Matrix that the Goods are not in accordance with the Contract or are defective, Matrix may at its discretion repair the Goods or replace the Goods or to refund the purchase price against return of the Goods.
- 8.7. Where Goods are lost, 2 clear days' notice are required to be given to the carrier of such loss. The Customer shall notify Matrix of such loss within 2 days of delivery or non-delivery to the Customer's premises, to enable Matrix to notify the carrier of the claim.
- 8.8. Where Goods are damaged in Transit, the Customer shall notify Matrix immediately upon identification of the damage, and no later than two working days following delivery of the goods, to enable Matrix to notify the carrier of the claim.
- 8.9. Where Goods are to be collected by the Customer, Matrix shall notify the Customer of availability of such Goods for collection by written or verbal notice of availability. Goods shall be collected within seven days from the date of notice of availability. Should the Customer fail to collect the Goods within the seven-day period the Customer will be liable for any costs, losses or expenses arising from the Customer's failure to collect the Goods.
- 8.10. Matrix shall not be obliged to provide any Goods not referred to on the Order Confirmation(s) or, in the absence of an order confirmation, the Quotation provided to the Customer in respect of the supply of Goods by Matrix.

## 9. Installation and Configuration

- 9.1. Where Matrix's Quotation includes Installation and Configuration Services the Specification within the Scope of Service will detail the work which is included within the Quotation.
- 9.2. If it's not in the Specification, it is not included in the pricing. Make sure you check it and
- 9.3. If additional work is required, this will be done as Time and Materials and charged in addition.

## 10. Acceptance

- 10.1. The Customer shall carry out the Acceptance Tests in accordance with the Scope of Service. On completion of the Acceptance Tests the Customer shall notify Matrix of the results. Once the Acceptance Tests have been completed to the level detailed in the Specification the work will be deemed complete and any related and payment due.
- 10.2. If the Customer does not complete the Acceptance Tests within 14 days of the date set out in the Scope of Services for carrying out the Acceptance Tests, acceptance of work will be deemed to have occurred and payment become due.
- 10.3. Acceptance of the work shall be deemed to have occurred on whichever is the earliest of:
- 10.3.1. the completion by the Customer of the Acceptance Test detailed in the Scope of Work; or
- 10.3.2. the use of the Goods or Services by the Customer in the course of its business.

## 11. Passing of Risk

- 11.1. Where the Goods are to be delivered to the Customer at a location in the United Kingdom, the Goods shall be at the Customer's risk from the time of delivery of the Goods to the Customer.
- 11.2. All Goods to be delivered to the Customer at a location outside the United Kingdom shall be at the Customer's risk from the time of delivery of the goods to the carrier.
- 11.3. All Goods to be collected by the Customer shall be at the Customer's risk from the time of collection.
- 11.4. The Company shall not be liable for any loss of any kind to the Customer arising from any damage to the Goods occurring after the risk has passed to the Customer howsoever caused.

## 12. Lease

- 12.1. If any payments due to Matrix in respect of Goods or Services are to be paid by a third party, then the Customer agrees that immediately on delivery of the Goods in question the Customer will sign the acceptance note for the leasing, company or other third party and will generally take all steps as may be necessary to ensure that payment is made to Matrix for the Goods and/or Services in accordance with these Terms.

## 13. Matrix Employees

- 13.1. The Customer will take all such steps as may be necessary to ensure the safety and welfare of any of Matrix's representatives who visit any premises of or on behalf of the Customer.
- 13.2. The Customer will fully indemnify and hold harmless Matrix from and against any claim for loss, damage or injury to any person or property occasioned by or arising directly or indirectly from any negligence or misuse of the Goods or the equipment or any other breach of these Terms by or on behalf of the Customer.
- 13.3. Aggressive or Abusive Behaviour  
The threat or use of physical violence, verbal abuse or harassment towards Matrix staff is not acceptable under any circumstances. Matrix employees are under strict instructions to reports all such incidents. All such incidents will be considered a material breach of contract resulting in immediate Termination of the Agreement under Clause 24.1 below.

## 14. Liability

- 14.1. Subject as expressly provided in these Terms and except where the Goods are sold 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, but nothing in these Terms will affect the liability of Matrix for any fraudulent misrepresentation.
- 14.2. Where the Goods are sold under a consumer transaction (as defined by the Consumer Transaction (restrictions on Statements) Order 1976) the statutory rights of the Customer are not affected by these Terms.
- 14.3. The Customer accepts that in respect of the sale of the Goods, whilst Matrix will endeavour to use its expertise and experience to advise the

Customer, Matrix is acting as a supplier only and it is the Customer's responsibility to ensure that the Goods will be suitable for its requirements and the Customer acknowledges that prior to the Contract it has fully and accurately advised Matrix of its requirements, both present and anticipated, in respect of the Goods.

- 14.4. If Matrix is unable, other than through the act or default of the Customer, within a reasonable time to repair or replace any defective Goods in accordance with the Warranty set out in these Terms and where such Goods are unusable due to such defect then, the Customer's only remedy is to reject such Goods and on their return to Matrix's premises the Customer is entitled to recover the price paid for such Goods provided the Customer notified such defect in accordance with these Terms,
- 14.5. Except in the case of death or personal injury caused by Matrix's negligence, or liability for defective products under the Consumer Protection Act 1987, Matrix will not have any Liability to the Customer for loss of profit or any indirect, special or consequential Loss of the Customer arising out of or in connection with the provision of any goods or services or any delay in providing or failure to provide any goods or services even if Matrix had been advised of the possibility of such potential loss.
- 14.6. Without prejudice to clause 14.8, if Matrix fails to provide Services in accordance with its obligations hereunder, the total Liability of Matrix in any one year for any Loss suffered by the Customer as a result of such failure will not exceed the Charges paid by the Customer in such year for the Services in question.
- 14.7. Without prejudice to clause 14.8, if Matrix fails to provide the Services in accordance with its obligations hereunder, the total Liability of Matrix for any Loss suffered by the Customer as a result of such failure will not exceed the charges paid by the Customer in respect of such Services.
- 14.8. Notwithstanding the express provisions of clauses 14.6 and 14.7, except in the case of death or personal injury caused by Matrix's negligence, or liability for defective products under the Consumer Protection Act 1987, in no event shall Matrix's Liability in respect of any Loss to the Customer exceed £50,000.
- 14.9. Except in the case of death or personal injury caused by Matrix's negligence, or liability for defective products under the Consumer Protection Act 1987, no action regardless of form may be brought by the Customer more than 12 months after the cause of action has accrued.
- 14.10. Matrix will have no liability under these Terms or otherwise to the Customer arising out of:
  - 14.10.1. any loss or corruption of any documents, data, memory erasure of media stored on disk, whether total or partial howsoever arising by reason (in whole or in part) of the Customer's failure to maintain adequate back-up copies of all of its operating system software, application software, data files and other documentation;
  - 14.10.2. any loss or corruption of any documents, data, memory erasure of media stored on disk, whether total or partial howsoever arising, including but not limited to loss which may occur, whilst installation, service or maintenance work is being carried out by or on behalf of Matrix in accordance with these Terms or any other reason;
  - 14.10.3. any act or omission of any third party telecommunication provider, or fault or failure of their equipment (including any prevention of any remote servicing facility in respect of the Equipment);
  - 14.10.4. and if any damage to any of the program or data files of the Customer occurs then Matrix's responsibility will be confined to assisting the Customer to restore the latest backup copy and installing application software made available on site by the Customer. If on site assistance is required to reconstruct the files then Matrix will charge the Customer for the cost of such assistance at Matrix's then current rates.
- 14.11. The Customer warrants to Matrix that none of its employees nor the employees of any other party will become employees of Matrix by reason of the provision of the services by Matrix under these Terms, the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("the Regulations") or otherwise. The Customer will repay to Matrix any costs, expenses or other sums for which Matrix is or may be liable by reason of the applicable or alleged application of the Regulations in relation to provision of such services by Matrix including (without limitation) any compensation or damages which Matrix pays to any such person.

## 15. Warranties

- 15.1. The Customer warrants and represents that the use by Matrix of any data, materials or equipment supplied by the Customer for use by Matrix, will not infringe the Intellectual Property Rights of any third party and the Customer will fully indemnify Matrix in this respect.
- 15.2. The Customer acknowledges that Matrix is not the manufacturer of the Goods. Matrix will pass on to the Customer such unexpired warranties it receives from the manufacturers of the Goods as are

capable of transfer and Matrix's liability shall be limited to such guarantee as it may receive from the manufacturer in particular no warranty is given in respect of the documentation or goods or services not provided by Matrix.

- 15.3. The Customer acknowledges that software products are by their very nature susceptible to imperfections in operation and subject to Clause 15.1 no warranty is given in respect thereof.
- 15.4. Matrix's obligations and liabilities in respect of the Goods shall be limited to those set out expressly herein and Matrix specifically excludes without limitation the implied conditions of satisfactory quality and fitness to any particular use or purpose. Matrix shall have no liability whatsoever in respect of any advice and/or information which may be given to the Customer by Matrix relating to Goods, configuration or otherwise.
- 15.5. The Customer shall ensure that a qualified representative authorised by the manufacturer to offer warranty and maintenance on those Goods performs any warranty and maintenance service performed on Goods.
- 15.6. The Customer is advised to keep in force a maintenance contract in respect of the Goods, Equipment and Services.

## 16. Confidentiality

- 16.1. Neither Matrix or any of our representatives or customers will, without the other's written consent, disclose to any third party any information concerning the business or method of working of the other party which may be revealed to it during the period of the agreement or otherwise, except as required by law or to the extent that such information may become public knowledge or may be acquired or generated by either party independently from the other otherwise than by reason of a breach of this clause
- 16.2. Except as expressly provided, neither party may at any time whether during or after the expiry of these Terms use or disclose the other party's Confidential Information and the Customer will take all reasonable steps to ensure that its employees are bound by the same obligations and that such obligations will continue beyond the termination of employment with the Customer.
- 16.3. Matrix may as a consequence of providing any services to the Customer be exposed to information which the Customer may consider to be Confidential Information. It is the Customer's responsibility to ensure that any such Confidential Information is marked appropriately or otherwise identified in writing to Matrix.
- 16.4. The obligations of this clause 4.9 shall survive the termination of these Terms.

## 17. Intellectual Property Rights

- 17.1. Intellectual Property Rights and all other rights in the Goods and Services and any associated or other documentation produced as a result of the Services (other than the Third Party Software) shall be owned by Matrix and the Customer shall have no right title or interest therein except as expressly set out in the Agreement.
- 17.2. So long as the Customer shall have made all payments due under this Contract in accordance with its terms and subject to the terms of Clause 2, Matrix shall grant to the Customer a non-exclusive, non-transferable licence to such extent as is necessary to enable the Customer to make reasonable use of the Goods and Services as is envisaged by the parties. On termination of the Agreement this licence will automatically terminate.

## 18. Customer Responsibilities

- 18.1. The Customer shall:
  - 18.1.1. Assign a Key Contact who is responsible for accepting deliverables, authorising payments and reviewing status. The Key Contact shall have the authority to contractually bind the Customer on matters relating to the Goods and Services.
  - 18.1.2. Provide in a timely manner such access to Equipment and facilities as required by Matrix to perform the Services.
  - 18.1.3. Ensure the Key Contact or delegate is available when required to assist Remote Support.
  - 18.1.4. Act upon reasonable advice when advised to prevent problems reoccurring.
  - 18.1.5. Arrange maintenance agreements for all Equipment not expressly included within the Scope of Service.
  - 18.1.6. Prepare at its own cost the relevant premises for the supply of Services unless it is included in the Scope of Service
  - 18.1.7. Ensure that Matrix staff are informed of the Customer's premises and safety procedures when they are working on the Customer's premises.
  - 18.1.8. Arranging all required insurance for Goods and Equipment.
  - 18.1.9. Performing data backup.

- 18.2. If Matrix is prevented or delayed in its obligations under the Agreement by any act or omission of the Customer or the Customer's agents, sub-contractors or employees:-
- 18.3. the Customer shall be liable to pay Matrix on demand all reasonable costs, charges or losses sustained or incurred by it (including without limitation any direct or indirect consequential losses, loss of profit and loss of opportunity to deploy resources elsewhere) subject to Matrix confirming such costs, charges and losses to the Customer in writing.
- 18.4. Matrix shall be entitled to suspend any related Service Level Agreement or Project milestone

## 19. Performance and Force Majeure

- 19.1. Matrix will not be liable for any failure or delay in complying with these Terms if the failure or delay was due to force majeure, including any circumstances whatsoever beyond the reasonable control of Matrix in which event Matrix will as soon as reasonably practicable notify the Customer of the nature and extent of the circumstances in question. If the force majeure continues for more than 30 days then Matrix may cancel this Contract (or any part thereof) without liability to the Customer.
- 19.2. Matrix shall be relieved of all liability otherwise arising under these Terms to the extent that it shall be unable to carry out any of its obligations hereunder by reason of wars, strikes, lockouts, governmental controls or restrictions, non-availability of goods or personnel or any other cause whatsoever beyond the Company's control.

## 20. Web-Sites and Domain Names

- 20.1. The Customer understands that it has full responsibility for the renewal of any Internet domain names or web hosting facility. Matrix cannot be held responsible for problems arising from reallocation of domain names or loss of Internet presence.
- 20.2. Matrix cannot guarantee that it will be able to register any requested Internet Domain Name and until confirmation of registration is given the Customer shall not assume the registration has been effected.
- 20.3. When Matrix acts as the agent of the Customer in the registration of Internet Domain Names the contract for any Internet Domain Names registered is solely between the Customer and the appropriate Naming Authority.
- 20.4. The Customer is bound by the terms and conditions of the appropriate Naming Authority a copy of which will be provided on request.
- 20.5. The Customer indemnifies Matrix against all costs claims expenses arising from the content of any web site, e-mail or other electronic communication through a service provided by Matrix to the Customer.
- 20.6. The Customer indemnifies Matrix against all costs claims expenses arising from a requested Internet Domain Name infringing the rights of any third party.
- 20.7. Matrix provides no warranty and cannot be held responsible for problems arising from a requested Internet Domain Name infringing the rights of any third party.

## 21. Provision of Services

- 21.1. Matrix will supply the Services with reasonable skill and care. However, by signing the Agreement the Company accepts that Matrix cannot guarantee that:
  - 21.1.1. the Services will be uninterrupted, secure or error-free; or
  - 21.1.2. any Data generated, stored, transmitted or used via or in connection with the Services will be complete, accurate, secure, up to date, received or delivered correctly or at all.
- 21.2. Unless expressly contracted for and detailed in the Scope of Service Matrix do not provide a back-up or guarantee the integrity of the Company Data; however, Matrix will use reasonable endeavours to provide copies of Data for disaster recovery purposes.
- 21.3. Matrix may have to suspend the Services for repair, maintenance or improvement without prior notice. If so, we will restore them as quickly as is reasonably practicable.

## 22. Sub-Contracts

- 22.1. Matrix may assign, sub-contract or otherwise transfer the benefit of, and/or its obligations under this Contract to any person at any time.
- 22.2. The Customer acknowledges that this Contract is personal to the Customer and that it may not assign or in any way make over to any third party, whether in whole or in part, the benefit of, and/or its obligations under this Contract without the prior written authority of Matrix and on such terms as Matrix may reasonably require.
- 22.3. Save where expressly stated in these Terms, no person will become entitled to enforce any of its provisions of these Terms who would not have been so entitled but for the provisions of the Contracts (Rights of

Third Parties) Act 1999, the provisions of which do not apply to these Terms.

## 23. Forbearance

- 23.1. No forbearance, indulgence, time or relaxation on the part of Matrix granted to the Customer in respect of any of the Terms shall in any way affect, diminish, restrict or prejudice rights or powers of Matrix under any contract for sale of goods or operate as or be deemed to be a waiver or any breach by the Customer of any of these Terms.

## 24. Termination

- 24.1. Breach of Clause 13.3 will result in suspension of services and termination of the Contract with immediate effect. Notice Periods do not apply.
- 24.2. Matrix may without prejudice to any other remedy available to it at any time by giving written notice terminate or suspend this Contract or such part of it as Matrix may elect (including stopping any Goods in transit) if:
  - 24.2.1. the Customer commits any continuing or material breach of these Terms and if the breach is capable of remedy, is not remedied within thirty days of a written notice detailing the breach;
  - 24.2.2. a resolution is passed or an order is made for the liquidation of or the winding up of the Customer (save for the purpose of a bona fide reconstruction or amalgamation);
  - 24.2.3. the Customer becomes subject to an administration order, a receiver or manager or administrative receiver is appointed over the Customer's property or assets;
  - 24.2.4. the Customer suffers execution or distress or takes or suffers any similar action in consequence of a debt;
  - 24.2.5. the Customer is insolvent or would be taken as insolvent under section 123 Insolvency Act 1986;
  - 24.2.6. the Customer is dissolved or otherwise threatens or ceases to carry on business or a substantial part of it;
  - 24.2.7. in the case of a sole trader or partnership anything analogous to any of the above occurs.
- 24.3. On termination of this Contract for any reason the Customer will return or delete any of Matrix's Confidential Information and return to Matrix all property of Matrix under the Customer's possession or control and Matrix will return or delete any of the Customer's Confidential Information and return to the Customer all property of the Customer under Matrix's possession or control.
- 24.4. On termination of the Contract any licence to use software granted by Matrix will immediately terminate and the Customer will return to Matrix any such software and all copies thereof and will not use or permit the use of any such software. The Customer acknowledges and agrees that Matrix will be entitled to remove such software from all operating systems of the Customer whether by means of remote access or otherwise. The Customer will not do or omit to do anything which might prevent or hinder such removal.
- 24.5. If the Customer terminates this Contract (or Matrix terminates by reason of any acts or omissions of the Customer) then
  - 24.5.1. in respect of any Goods such termination can only be made with Matrix's written consent and on terms that the Customer will indemnify Matrix in full against all loss (including loss of profit) costs, charges and expenses incurred by Matrix as a result of such termination;
  - 24.5.2. in respect of Services if the termination occurs prior to the end of the Initial Term or any Renewal Period, Matrix may without prejudice to any other remedies available to it demand and receive from the Customer an early termination charge. This charge will be calculated to recover such costs as Matrix has reasonably incurred in equipping itself to deliver Services and which have not been fully recovered by Matrix from the Charges paid by the Customer at the date of termination; and
  - 24.5.3. in respect of Services the Customer shall be liable for the full value of Matrix's charges set out in the Proposal as well as any and all charges, fees and additional costs accrued up to the point of termination, which may include but not be limited to software costs and travelling expenses.

## 25. Data Protection

- 25.1. Each party will ensure that in the performance of its obligations under these Terms it will at all times comply with the Data Protection Act 1998.
- 25.2. The Customer consents to the processing by Matrix of all the Customer's personal data (as the term 'personal data' is defined in the Data Protection Act 1998) for all purposes connected with these Terms.
- 25.3. The Customer acknowledges that any data transmitted over the Internet or through any other form of transmission including by

telephony or other electronic means cannot be guaranteed to be free from the risk of interception even if transmitted in encrypted form and that Matrix has no liability for the loss, corruption or interception of any such data.

## 26. Non Solicitation

- 26.1. The Customer acknowledges the investment made by Matrix in the training of Matrix's Personnel and the commercial interest which Matrix has in retaining their services.
- 26.2. The Customer agrees that if any of the Matrix Personnel who have provided all or any part of any services for or on behalf of Matrix to the Customer within 6 months of leaving the employment or engagement of Matrix accepts an Engagement with the Customer then the Customer will pay to Matrix such sum as represents 30% of the anticipated annual salary or other sums to be paid by the Customer to such person(s) within the first year of such Engagement.
- 26.3. The Customer agrees, and undertakes, that it shall not solicit, or attempt to solicit, in any way, the services of any employee of Matrix with whom it has had dealings during a period of three months immediately prior to its approach.
- 26.4. This undertaking will not apply in respect of any employee of Matrix, whom, without having been previously approached directly or indirectly by the Customer, responds to any advertisement placed by the Customer or on the Customer's behalf.
- 26.5. The Customer acknowledges that employees of Matrix are under restrictive covenants post termination of employment with the Company, and it is an obligation of any employee of Matrix to bring these restrictive covenants to the attention of any prospective employer. The Customer agrees to make all reasonable attempts to obtain details of any restrictive covenants directly from any current or ex-employee of Matrix which approaches the Customer, directly or indirectly, to offer services, and has had dealings with the Customer during a period of three months immediately prior to the approach. In the case of ex-employees of Matrix, the Customer shall request details of any relevant restrictive covenants directly from Matrix.
- 26.6. The Customer agrees that after being made aware of any imposing restrictive covenants, by whatsoever means, surrounding the employee's employment with the Company, should it continue to employee or pursue, whether directly or indirectly, with a view to obtaining services of, any current or ex-employee of the Company, Clause 26.4 shall offer no exclusion of liability to the Customer, and Matrix may consider the Customer to be in breach of this section of the Terms.
- 26.7. Should the Customer breach the terms of this section of the Terms and employ or engage an employee of Matrix (without the Company's prior written consent) Matrix reserves the right to charge the Customer a fee of 25% of the staff member's annual earnings from Matrix.

## 27. Relationship

- 27.1. The relationship between the Customer and Matrix shall be as buyer and seller and nothing contained herein shall be deemed to create a partnership or agency.

## 28. Notices

- 28.1. All notices under these Terms must be in writing and will be effective only if given by either party to the other party at their last known principal place of business or such other address as that party has nominated, in writing, for that purpose.

## 29. Law and Jurisdiction

- 29.1. These Terms will be governed by and construed in accordance with English Law and the English Courts will have non-exclusive jurisdiction to hear all disputes arising in connection with these Terms.
- 29.2. The invalidity or unenforceability for whatever reason will not prejudice the continuation in force of the remainder of these Terms and if any part of these Terms is held by a Court or other competent authority to be illegal or ineffective it or they will be replaced with such legal and effective terms that most closely approach the ineffective terms.

## 30. Sole Appointment

- 30.1. The Customer shall not allow any person or company other than Matrix to support the Equipment.
- 30.2. The Customer accepts that failure to observe this Clause may result in:
  - 30.2.1. Matrix's responsibilities under the Scope of Service being reduced and Service Levels being suspended
  - 30.2.2. Matrix reserves the right to perform a new Audit Service and carry out remedial work - at the sole discretion of Matrix.
  - 30.2.3. Additional costs incurred by Matrix being charged to the Customer.

## 31. Entire Agreement

- 31.1. These Terms, the Quotation and Scope of Service contains the entire agreement between the parties with respect to their subject matter and supersede all previous written and oral agreements and understandings between the parties. The Customer acknowledges that in entering into the Contract it does not rely on any representation, warranty, agreement or other provision except as expressly set out in these Terms and that all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law, but nothing in these Terms will affect the liability of Matrix for any fraudulent misrepresentation.

# Definitions

Within all of Matrix's Agreements and Contracts, the following words have the following meanings:

## General Definitions

<b>Acceptance Test</b>	means the test conducted by the Customer to determine if the requirements of a Specification or Scope of Service have been met. If the Customer requires an Acceptance Test these tests must be defined and agreed by both parties in advance and included with the Quotation and Agreement.	<b>Normal Working Hours</b>	means 08:30 to 17:30 Monday to Friday but excluding bank or statutory holidays unless otherwise agreed in writing.
<b>Accepted</b>	means a printed Agreement signed by both parties; or  A customer Purchase Order accepting a Matrix Proposal; or  an order placed electronically by means of the Customer accepting an emailed quotation by clicking on the embedded link and entering the required details.	<b>OOH</b>	means Out of Hours
<b>Agreement</b>	means a contract for the provision of Goods or Services detailed in the Scope of Service and Accepted by both parties (Matrix and the Customer). The Agreement declares that the customer accepts Matrix's Standard Terms and Conditions of Trading together with the additional terms detailed in the Scope of Service.	<b>Out of Hours</b>	means any period outside of the contracted cover be that Normal Working Hours or Extended Working Hours
<b>BCP</b>	Business Continuity Plan	<b>Portal</b>	means our Internet site ( <a href="http://portal.mtxit.com">portal.mtxit.com</a> ) which provides access or links to our systems
<b>Business Day</b>	means any day in which normal business is conducted. This is Normal Working Hours on Monday to Friday, and excludes weekends and bank or statutory holidays	<b>Project Plan</b>	means the plan describing the Services and setting out the estimated timetable and responsibilities for the provision of the Services by Matrix.
<b>Contract</b>	means the same as Agreement.	<b>Proposal</b>	means the proposal to the Customer setting out Matrix's understanding of the Customer's requirements and defining the Services we propose to provide. A Proposal is a sales document and unless otherwise stated is not an offer capable of acceptance.
<b>Customer</b>	means the company, organisation, person or persons that enter into the Agreement with Matrix for the supply of Goods or Services.	<b>Quotation</b>	means the quotation giving the Fixed Price Quotation or Time and Materials Estimate cost for a particular Service.
<b>Customer Applications</b>	means the computer programs used by the Users to perform business functions, tasks, or activities for the benefit of the Customer. Examples of applications includes word processor, spreadsheet, accounting software, CRM system, a database, design software, or a photo editor.	<b>Rates</b>	means the current published Hourly and Daily labour rates of Matrix
<b>Data</b>	includes configuration information, call logs, documents, text, software, music, sound, photography, messages, and other material of any kind in any form;	<b>Sites</b>	means Locations
<b>Deliverables</b>	means the specific work outcomes required and detailed in the Scope of Service	<b>Specification</b>	means the detailed description of work to be done or materials to be used in a Project.
<b>End Users</b>	means Users	<b>System</b>	means a server, desktop computer or laptop
<b>Endpoint</b>	means a System or other device such as tablet, smart-phone or VoIP phone running the Matrix RMM Agent and will be specified within the context of the service being agreed.	<b>Ticket Number</b>	means the unique reference number assigned to an issue within the Ticketing System used to track and report on a particular problem, its status, and other relevant data. The Ticket Number also allows the User and Matrix to quickly locate, add to or communicate the status of the User's issue or request and maintain a record of work performed and time used.
<b>Equipment</b>	means all or part of the network, hardware, software and Third Party Software as specified or identified in the Scope of Service.	<b>Ticketing System</b>	means the computer software package used by Matrix to manage and maintain lists of issues for each Customer. The Ticketing System is used by Matrix to create, update, and manage the resolution of reported Customer issues.
<b>Extended Hours</b>	means <b>Extended Working Hours</b>	<b>User</b>	means the individual(s) using the Equipment or Services
<b>Extended Working Hours</b>	means 08:00 to 20:00 Monday to Friday but excluding bank or statutory holidays unless otherwise agreed in writing.	<b>Website</b>	means our web presence at <a href="http://www.mtxit.com">www.mtxit.com</a> (including any associated website, web-page, or sub-page of the Matrix platform) and other locations at which we advertise from time to time.
<b>Goods</b>	means the computer and communications hardware, software and related equipment which Matrix is to supply in accordance with a Service.	<b>Service Category Definitions</b>	
<b>Hours of Cover</b>	means the contracted hours during which Service will be provided	<b>Ad Hoc Hourly Rates</b>	means the Rates used for billing Ad Hoc Services delivered under the Agreement.
<b>Locations</b>	means the locations specified by address in the Agreement Details which are entitled to the Service	<b>Ad Hoc Services</b>	means work performed within the terms of the Agreement which is not covered by the Scope of Service.
<b>Matrix</b>	means Matrix Business IT Limited, registered in England number 10099930. Registered address G1, Fareham Heights, Standard Way, Fareham PO16 8XT	<b>Agreement Schedule</b>	means the addendum to the Agreement which details the quantities and Rates relating to Volume Related Services.
<b>Matrix IT Solutions</b>	is a trading style of Matrix	<b>Agreement Schedule Review Period</b>	means the period at which the quantities and rates in the Agreement Schedule will be reviewed and updated.
<b>NBD</b>	means the next Business Day following the current day.	<b>Audit Service</b>	means an inspection of the Equipment or part thereof but does not include repair or replacement.
		<b>Block Time Agreement</b>	means an Agreement for a block of hours between the Customer and Matrix for the sale of Goods or Services in accordance with these Terms.
		<b>Budgeted Hours Allowance</b>	means the pre-agreed monthly Support allowance to perform reactive and ad hoc Support activity not included within the elements of the Schedule of Service.
		<b>Fixed Price Quotation</b>	means a Service carried out for the price specified in the Scope of Work. If a specific User Acceptance Test is required, this must be agreed and specified in the Scope of Work.

<b>Hosted Services</b>	means, those developments, implementations, software and or systems, hosted by Matrix or its Associates and provided to or on behalf of the Customer pursuant to the Contract.
<b>Managed Service Agreement ("MSA")</b>	means the document which is similar to an SLA but with a greater level of outsourced management responsibility. The MSA provides definition of inclusive service delivery and also defines the underpinning services such as regular patch management, preventive maintenance and monitoring of the Customer's Equipment.
<b>Minimum Quantity</b>	means the number of items included within the base level Agreement for Volume Related Services. Additional devices are then charged at the unit price for the Service Level selected as detailed in the Schedule of Services.
<b>Project Services Or Project</b>	means a Proposal with defined deliverables or a defined Project Plan. Unlike Support Services, a Project has a definite beginning and end. The work will be carried out as Time and Materials unless expressly stated in the Proposal that it is being delivered for a Fixed Price.
<b>Scope of Service</b>	means the Service Level Agreement, Managed Service Agreement, VOIP Agreement, Fixed Price Quotation or Time and Material Estimate agreed by the Customer setting out details of the Goods and Services .
<b>Scheduled Visits</b>	means the pre-agreed and scheduled monthly Support allowance carried out at fixed times to perform regular, proactive maintenance tasks, user support, as well as routine work to reorganise or maintain existing systems.
<b>Service</b>	means the services to be provided by Matrix as set out in the Scope of Service, together with any other services including which Matrix provides or agrees to provide to the Customer.
<b>Service Level Agreement ("SLA")</b>	means the document which provides the record of common understanding about services, priorities, and responsibilities. Each area of service scope will have the "level of service" defined.
<b>Silver IT Support Agreement</b>	means Block Time Agreement
<b>Supplementary Hours</b>	means pre-agreed and pre-contracted Support work outside the scope of the agreed Managed Services:
<b>Support Services Or Support</b>	means ongoing Services defined by a Service Level Agreement or Managed Service Agreement.
<b>Time and Materials Estimate</b>	means a Service, typically not capable of being precisely defined or without a detailed Specification, in which the Customer is invoiced for the materials used and the work performed at the Rates given in the Scope of Service.
<b>Volume Related Services</b>	means a Service for which the Charges vary relative to the number of items of Equipment.

#### Term Related Definitions

<b>Cancellation Period</b>	means the period after the Start Date during which either party to the Agreement is entitled to cancel the Agreement without incurring financial penalty.
<b>Commencement Date</b>	means the date at which either (i) the Service will be available from (ii) when the Company first start to use the Services whichever happens first.
<b>Early Termination Fee</b>	means the amount the Customer will pay Matrix for the balance of the Minimum Period that remains outstanding should an Agreement or Service be terminated.
<b>Fixed Term Agreement</b>	means a Contract to supply a Service for a specified period of time.  The Scope of Service will specify the end date and therefore the duration. The delivery of Service will cease on the date set at the outset.  The Customer will not be entitled to cancel the Agreement for the period of the fixed term.
<b>Maximum Change</b>	means the maximum variation to Services or the quantities in the Agreement Schedule allowed by either party before the Agreement must be renegotiated.
<b>Minimum Period</b>	means the minimum period of time following the Commencement Date in relation to each Service the Customer is contracted. The Service cannot be cancelled or varied by more than the Maximum Change during the Minimum Period. The charges and fees associated with the Service are due regardless of whether you terminate the Agreement prior to the expiration of the Minimum Period and they will continue to accrue and be owed by the Company for the remainder of the period;
<b>Notice Period</b>	means the minimum period of time specified in the Scope of Service required to terminate or vary by more than the Maximum Change the Agreement. Unless otherwise specified in the Scope of Service "Notice Period" means 30 days from the first day of the calendar month following the date on which Termination or a such a change is requested.
<b>Start Date</b>	means the date specified in the Scope of Service when the contract terms come into force. This will normally be concurrent with or in advance of the Commencement Date.