



## **ECM SYSTEMS LTD**

### **STANDARD TERMS & CONDITIONS OF BUSINESS 2007**

#### **GENERAL.**

1. In these conditions,
  - (a) ECM Systems Limited is called "the Company" and the individual, firm, company or other party with whom the company contracts is called "the Customer".
  - (b) "goods" means the hardware and/or software products, articles and materials which are to be supplied by the Company pursuant to the Contract (as hereinafter defined).
2.
  - (a) Any quotation or estimate given by the Company is only an invitation to the Customer to make an offer and no order of the Customer placed with the Company in pursuance of a quotation, or estimate or otherwise shall be binding on the Company unless and until it is accepted in writing by the Company on the Company's acceptance of order form.
  - (b) Any contract howsoever made, between the Company and the Customer ("the Contract") shall incorporate and be subject to these Conditions according to their provisions.
  - (c) The only terms of the Contract shall be those contained expressly or by reference in these conditions and any statement or representation written or oral made or given prior to the date of the contract is hereby excluded unless expressly incorporated therein.

#### **PRICES.**

3. Unless otherwise provided in the Contract:-
  - (a) The price of the goods excludes the cost of cases and other packing materials unless otherwise specifically provided.
  - (b) The price of the goods is exclusive of Value Added Tax or other Taxes Levies or Duties which may be attracted by the goods or their supply and which will be charged at the rate applicable at the appropriate tax point.
  - (c) The price of the goods excludes the cost of carriage to the contracted place of delivery by the means most convenient to the Company. If the Customer instructs the Company to send goods by passenger train, parcel post, air freight or other special transport the additional cost will be for the account of the Customer.
  - (d) If after the date of the Company's acceptance of order any change shall occur in the Company's costs of supplying the goods including changes in the costs of materials, labour, storage, transport and other services or other items including overheads which the Company has to pay or incur in the performance of the Contract, then the amount of any increase or decrease in such costs shall be added to or deducted from the price or prices stated in the acceptance of order and the Customer shall pay the resultant increased or decreased price or prices. A certificate of the Company's auditors certifying the amount of any such increase or decrease shall be conclusive and binding on the Customer and the Company.

- (e) Where any price quoted or estimated by the Company is based on a specific delivery period, the Company reserves the right to vary the price for the goods should the Customer require and such variation or modification is accepted by the Company, delivery over a different period.
- (f) The cost of any variation or modification in the specification of the goods requested by the Customer after the date of the Company's acceptance of order shall, if such variation or modification is accepted by the Company, be borne by the Customer.

**DELIVERY AND RISK.**

4. (a) Delivery of the goods shall be made to the Customer at the place specified in the Company's acceptance of order or as subsequently agreed between the parties and the risk in respect of all goods shall pass to the Customer at the time of delivery and from that time the Customer should effect insurance of the goods. Notwithstanding such delivery, the property in and title to the goods shall not pass to the Customer except as provided in Clause 5. If the Company does not deliver the goods on its own transport and the Customer does not collect the same on its own transport then unless otherwise agreed in writing, the Company shall at the Customer's expense (unless otherwise expressly agreed) arrange for the carriage of the goods to their place of delivery and the carrier selected by the Company shall be the agent of the Company.
- (b) Where damage to or loss of any of the goods occurs before delivery thereof to the Customer or the Company omits to deliver any of the goods the Company undertakes (subject as provided below) to replace free of charge any goods so damaged or lost and to deliver any goods it has omitted to deliver in which event the time for delivery of the replacement or omitted goods shall be extended for such period as the Company shall reasonably require for that purpose. The foregoing undertaking of the Company is conditional upon:-
- (i) the Customer giving written notice to the Company and the carrier (if other than the Company) in the case of damage, or in the case of loss such damage, loss or omission to deliver within 5 days and
  - (ii) the Customer if requested by the Company and at the Customer's cost returning any damaged goods to the Company within one month of receipt thereof.
- (c) Where the goods are delivered direct to the Customer or collected by the Customer from the manufacturer or supplier the Company shall not be liable for any damage to or loss of the goods whatsoever or whensoever occurring.
- (d) Save as expressly provided in this Condition the Company shall not have any liability whatsoever for or in connection with any damage to or loss of the goods in transit to the contracted place of delivery.

**TITLE.**

5. Until the Contract price of the goods comprised in this or in any other Contract between the Company and the Customer has been paid or satisfied in full:-
- (a) The title to and property in the goods shall remain vested in the Company (notwithstanding the delivery of the same and passing of the risk therein).
  - (b) The Company may at any time recover and resell the goods (if in the possession or under the control of the Customer) if the Customer commits any breach of the Contract and fails to remedy such breach within a period of thirty days from receipt of notice in writing from the Company requesting such breach to be remedied or any distress or execution is levied upon any of the goods or property of the Customer or the Customer has a Receiver appointed of the whole or any part of its undertaking property or assets or an Order is made or a Resolution is passed or analogous proceedings are taken for the winding up of the Customer or if any sum owed by the Customer to the Company under any Contract is not paid on the due date for payment. For the purpose of exercising its rights under this

sub clause (b) the Company its servants or agents together with all necessary and appropriate transport shall be entitled so far as possible to free and unrestricted entry upon the Customer's premises or any other location where the goods are situated.

- (c) The Customer shall be in possession of the goods as bailee of the Company. If the Company so requires the Customer shall store the goods for the Company in a proper manner without charge to the Company and ensure that they are clearly identified as belonging to the Company.
- (d) The Customer is hereby authorised
  - (i) to sell the goods in the ordinary course of its business but for the account of the Company and to pass a good title in the goods to its Customers.
  - (ii) to utilise the goods in the production and sale by the Customer in the ordinary course of its business or a product required by its Customers and to pass a good title in the goods to its Customers for that purpose. The Customer's right of resale or utilisation shall automatically cease upon the occurrence of any of the events referred to in sub-clause (b) hereof.
- (e) On the resale of the goods by the Customer or on the sale by the Customer of a product utilising the goods as contemplated by sub-clause (d) (ii) hereof the proceeds of sale thereof shall be received and held by the Customer in trust for the Company but the Customer shall be entitled to retain for itself therefrom any excess over the aggregate amount then owing by the Customer to Company under this or any other contract.
- (f) In addition the Company shall be entitled to recover directly from any Customer of the Customer any such proceeds of sale unpaid by such Customer provided that the Company shall return to the Customer any monies recovered in excess of the aggregate amount then owed by the Customer to the Company under this or any other Contract.
- (g) Where the goods includes or consists of Software, the additional terms set out in the Company's Standard Software Licence 2007 hereto attached shall apply.

## **PERFORMANCE.**

- 6. (a) The Company will use its reasonable endeavours to comply with any date or dates for despatch or delivery of the goods as stated in the Contract, but unless the Contract otherwise expressly provides, such date or dates shall constitute only statements of expectation and shall not be binding. If the Company having used its reasonable endeavours fails to despatch or deliver the goods by such date or dates, such failure shall not constitute a breach of the Contract nor shall the Customer be entitled to treat the Contract as thereby repudiated or to rescind it or any related Contract in whole or in part or claim compensation for such failure or for any consequential loss or damage resulting therefrom.
- (b) If the Company is prevented or hindered from performing the Contract or any part thereof by any circumstances beyond its control including (but with limiting the generality of the foregoing ) strikes, lock-outs or other industrial action, inability to obtain supplies of the goods, interruption of transport or other services or destruction of the goods further performance of the Contract shall be suspended for so long as the Company is so prevented or hindered provided that in the event that the performance of the Contract shall be suspended for more than 6 consecutive calendar months the Customer shall be entitled by notice in writing to the Company forthwith to terminate the Contract or to cancel any outstanding part thereof and in such circumstances the Customer shall pay at the Contract rate for all goods supplied by the Company to the date of such termination. The Company shall not have any liability to the Customer for any direct or consequential loss or damage suffered by the Customer as a result of the Company's inability to perform its obligations under the Contract in the aforementioned circumstances.
- (c) Where goods are delivered by instalments each such instalment shall be deemed to be sold or supplied under a separate Contract to which these Conditions shall apply (mutatis mutandis) and save as

provided in Clause 8(c) no default in respect of any one instalment shall affect or prejudice due performance of the Contract as regards any of the instalments.

- (d) Where goods are to be supplied or delivered by the Company in accordance with periodic delivery schedules or similar written notification of the delivery requirements of the Customer, the Customer shall not be entitled to cancel or vary any such delivery schedule or requirement without the prior written consent of the Company and the Company shall be entitled to reimbursement of any additional costs and expenses incurred or suffered as a result of such cancellation or variation.
- (e) When expedited delivery or completion is agreed to by the Company and necessitates overtime or other additional costs, the Customer shall reimburse the Company for the amount of such overtime or other costs, where postponement of delivery or completion is agreed by the company the Customer shall if required by the Company pay all costs and expenses (including a reasonable charge for storage and insurance of the goods) occasioned thereby but the goods shall be held at the Customer's risk as from the agreed time of postponement.
- (f) If performance of the Contract is suspended at the request of or delayed through default of the Customer including (without prejudice to the generality of the foregoing) lack of incomplete or incorrect instructions or refusal to collect or accept delivery of the goods for a period of 7 days or more, the Company shall then be entitled to payment at the Contract rate for goods supplied or ordered and any other additional costs thereby incurred including storage and insurance PROVIDED THAT if the Customer fails to collect or accept delivery of the goods or any part thereof within 28 days of written notification from the Company that the goods are ready for collection or delivery, the Company shall be entitled (without prejudice to its other remedies under the Contract for such breach) to sell the goods and to apply the proceeds of sale thereof towards payment of all sums due to the Company under the Contract or any other Contract between the Company and the Customer.

#### **ACCEPTANCE.**

- 7. (a) Without prejudice to the Customer's rights under Clause 9 the Customer shall be deemed to have accepted the goods as being in conformity with the Contract and shall be bound to pay for them unless written notice of rejection thereof is received by the Company within 5 days of delivery save in the circumstances referred to in Clause 9 goods accepted by the Customer cannot subsequently be returned.
- (b) If after the notice of rejection has been given the Customer deals with the goods as owner thereof or if any conduct of the Customer is inconsistent with such rejection or with the ownership of the goods by the Company the Customer shall be deemed to have accepted them and be bound to pay the Contract price.

#### **PAYMENT.**

- 8. (a) Unless the Contract otherwise provides, the Contract price for the goods shall be payable net cash not later than the last day of the month following the month of delivery or supply of the goods.
- (b) Where goods are delivered by instalments, the Customer shall be obliged to pay for each instalment upon the terms set out in sub-clause (a) of this Clause.
- (c) The time stipulated for payment shall be of the essence of the Contract and failure to pay within the period specified shall entitle the Company upon the expiration of 7 days notice in writing to the Customer to suspend further deliveries of the goods pending payment without prejudice to any other remedy available to the Company.
- (d) Unless otherwise agreed in writing the Customer shall not be entitled to set off against any Monies due to the Company under the Contract, any amount claimed by or due to the Customer by the Company whether pursuant to the Contract or on any other account whatsoever.

- (e) The Company shall be entitled to interest on any part of the Contract price not paid by its due date from that date until actual payment at the rate of Four per cent per annum above the Minimum Lending Rate of the Bank of England prevailing from time to time during such period.

**WARRANTY.**

9. (a) ECM provides a limited warranty of:

- (i) ninety (90) days for software products, or
- (ii) one (1) year for hardware products, or
- (iii) ninety (90) days for repairs to hardware products outside their warranty period

calculated from the earlier of:

- (1) the date of transfer of Title from ECM as set out in Clause 5, or
- (2) the date on which the product is first put into use.

- (b) Subject to the warranty period as set out in sub-clause (a) of this Clause, where the goods (or any part thereof) is shown by the Customer to the reasonable satisfaction of the Company to be defective (subject to the provisions of sub-clause (e) if applicable) the Company shall at its sole option either:-

(1) deliver replacement goods to the Customer free of charge, such replacement goods being subject to a similar warranty for the remainder of the original warranty period, or

(2) refund to the Customer the Contract price of such goods, or

(3) require the Customer to retain the goods and grant to the Customer a reasonable allowance in respect of the defect PROVIDED that:-

(i) The Customer at the time of delivery tested and examined the goods in all respects in order to determine whether or not they were fit for any purpose for which they are intended to be used and

(ii) the Customer notified the Company in writing within fourteen days of becoming aware of the defect and

(iii) if so required by the Company all defective goods are first returned to the Company's premises carriage paid by the Customer and

(iv) the goods have been properly and correctly stored and/or used by the Customer and

(v) the liability of the Company for any such defects shall be limited as provided in sub-clause (c) and (d) of this Clause.

- (c) The liability of the Company for any claim or claims for direct injury, loss or damage made by the Customer against the Company whether in contract or in tort (including negligence) on the part of the Company, its servants or agents (arising out of or in connection with any defect in the goods or any act, omission, neglect or default whether or not the same constitutes a fundamental breach of the Contract or a breach of the fundamental term thereof in the performance of the Contract (including without limiting the generality of the foregoing, breach of any condition or warranty whether express or implied by statute, common law or otherwise howsoever) ) shall be limited in the case of any defect in the goods to the Contract price of the Goods (subject to the provisions of sub-clause (e) if applicable) the subject of the claim or claims and in any other case to the total Contract price payable by the Customer under the Contract.

- (d) The Company shall not be liable for indirect or consequential injury, loss or damage suffered by the Customer whether the Customer's claim is made in contract or in tort (including negligence on the

part of the Company its servants or agents) arising out of or default referred to in sub-clause (c) of this Clause.

- (e). (1) This clause applies to the Company's software products designed and intended under the Contract for the playing of games of chance or skill.
- (2) The Company shall not be liable to the Customer and shall not be liable to indemnify the Customer against any claim by any other person for any loss caused by any failure of the software product howsoever caused except to the extent set out in sub-clause (3), below.
- (3) In the event of any software failure for which the Company is liable under the terms of the Contract or otherwise the Company shall be so liable only for the reasonable cost of identifying and correcting any fault in the software product which caused the failure.

Explanatory Note

(a) *This Note explains why the Company has incorporated this limitation of liability clause into its Conditions of Business. The Note does not form part of the clause, and it is not intended to be relied upon in interpreting the clause.*

(b) *The transfer of many games of chance or skill into an electronic format carries with it the risk of certain types of system failure which are not present in traditional format. Examples (which are not an exclusive list) are the disappearance, loss or corruption of data whilst a game is being played.*

(c) *Whilst the Company designs and tests software products for such games it can only carry out reasonable and proportionate tests, and the software products may therefore be used in ways beyond that to which it has been so tested.*

(d) *Further, the Company's software products are intended to be used in conjunction with other manufacturers' software products, some of which may not have been tested for their compatibility with the Company's products.*

(e) *Further, such games are commonly played for prize money. Since such games will be organised by or under authority from the Customer, the Company has no control over the value of such prize money, and therefore the value of any potential claim.*

(f) *Further, the circumstances and causes of any failure, and whether such failure was caused by any cause for which the Company might be liable might require complex and disproportionate investigation, and even in the event of such cause being identified the potential extent of the Company's liability might be unclear at law, and any claim might therefore result in lengthy and complex issues and disproportionate expense in ascertaining the extent of the Company's liability.*

- (f) Nothing in these Conditions shall
  - (i) limit or exclude the liability of the Company in respect of death or personal injury resulting from the negligence of the Company its servants or agents or
  - (ii) limit or exclude the respective rights and remedies of the Company and the Customer user under the Unfair Contract Terms Act 1977 or
  - (iii) exclude the conditions and warranties implied by section 12 of the Sale Of Goods Act 1979 and where the Customer deals as a consumer, the conditions implied by sections 13 to 15 inclusive of the said Act.
- (g) For the purpose of the Contracts (Rights of Third Parties) Act 1999 it is agreed that the Supplier and the Customer do not intend the terms and provisions of these Conditions or any other provisions of the Agreement to be enforceable by any third party who but for the said act would not have been entitled to enforce such terms.

## **INSOLVENCY AND BREACH OF CONTRACT.**

**10.** In the event that:-

- (a) The Customer commits any breach of the Contract and fails to remedy such breach (if capable of remedy) within a period of thirty days from receipt of notice in writing from the Company requesting such breach to be remedied or
- (b) Any distress or execution is levied upon any of the goods or property of the Customer or
- (c) The Customer (or where the Customer is a partnership any partner thereof) offers to make any arrangements with or for the benefit of its or his creditors or commits any act of bankruptcy or
- (d) The Customer (being a limited company) has a Receiver appointed of the whole or any part of its undertaking property or assets or an order is made or a Resolution is passed or analogous proceedings are taken for the winding up of the Customer (save for the purpose of reconstruction or amalgamation without insolvency and previously approved in writing by the Company) the Company shall thereupon be entitled without prejudice to its other rights hereunder, forthwith to suspend all further deliveries until the default has been made good or to terminate the Contract or any unfulfilled part thereof or at the Company's option to make partial supplies of goods. Notwithstanding any such termination, the Customer shall pay to the Company at the Contract rate for all goods delivered up to and including the date of termination.

## **TECHNICAL KNOWLEDGE.**

**11.** In this Clause and in relation to the goods "technical knowledge" shall mean and include all technical information know-how manufacturing techniques engineering data specifically of materials knowledge and information relating to any invention design or improvements plans drawings and specifications as well as any process machinery and apparatus used and experiments and trials made and other information appertaining or relating to or in respect of the manufacture of or for the use of the goods. The technical knowledge and all copyright and title thereto shall be the absolute property of the Company. The Customer shall hold any technical knowledge as absolutely secret and confidential and shall not without the prior consent in writing of the Company disclose or communicate to any third party the technical knowledge or any part thereof or permit or suffer any act matter or thing whereby the same may be disclosed or communicated to or ascertained by others and in the event of consent being given by the Company for disclosure to a third party the Customer shall make known to any such third party the terms hereof and bind such third party to such terms.

## **SEVERANCE.**

**12.** If at any time any one or more of the provisions of these Conditions becomes invalid, illegal or unenforceable in any respect, the validity and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

## **WAIVER.**

- 13.** The rights and remedies of the Company under the Contract shall not be diminished waived or extinguished by the granting of any indulgence, forbearance or extension of time by the Company nor by any failure of or delay by the Company in asserting or exercising any such rights or remedies.
- 14.** The Customer shall indemnify the Company against all damages penalties costs and expenses to which the company may become liable as a result of work done in accordance with the Customer specifications which involves infringement of any letter patent or registered design.

## **ASSIGNMENT.**

15. The benefit of the Contract shall not be capable of assignment by either of the parties without the consent in writing of the other party
16. These Conditions and each and every Contract made pursuant thereto shall be governed by and construed in all respects in accordance with English Law and the Company and the Customer irrevocably submit themselves to the jurisdiction of the English Courts.



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# **ECM SYSTEMS LTD**

## **STANDARD SOFTWARE LICENCE 2007**

In this Licence the term "Computer" shall mean the Hardware, if the Hardware is a single computer system, or shall mean the computer system with which the Hardware operates, if the Hardware is a computer system component.

### **1. GRANT OF LICENCE.**

ECM Systems Ltd grants you the following rights provided that you comply with all terms and conditions of this Licence:

- a. Installation and use. Except as otherwise expressly provided in this agreement, you may install and use one copy of the Software on the Computer. The Software including any accompanying data, files or media may not be installed, accessed, displayed, run, shared or used concurrently on or from different computers, including a workstation, terminal or other device.
- b. License Grant for Documentation. The documentation that accompanies the Software is licensed for internal, non-commercial reference purposes only.

### **2. RESERVATION OF RIGHTS AND OWNERSHIP.**

ECM Systems Ltd reserves all rights not expressly granted to you in this Licence. The Software is protected by copyright and other intellectual property laws and treaties. ECM Systems Ltd owns the title, copyright, and other intellectual property rights in the Software including its algorithms and communications protocols. The Software, algorithms and communications protocols are licensed, not sold. This Licence does not grant you any rights to trademarks or service marks of ECM Systems Ltd.

### **3. LICENCE KEYS AND LOCKS.**

Full functionality of the software may be enabled by a licence key issued by ECM. You may not use any licence key not expressly provided to you by ECM. You may not circumvent or attempt to circumvent any lock or licence key procedures. Unlicensed software may only work for a limited period of time and / or have limited functionality.

### **4. LIMITATIONS ON REVERSE ENGINEERING, DECOMPILATION, AND DISASSEMBLY.**

You may not reverse engineer, decompile, or disassemble the Software its algorithms or protocols, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.

### **5. ADDITIONAL SOFTWARE/SERVICES.**

This Licence applies to updates, supplements, add-on components of the Software ("Supplemental Components") that ECM Systems Ltd may provide to you or make available to you after the date you obtain your initial copy of the Software, unless other terms are provided along with the Supplemental Components. If other terms are not provided along with such Supplemental Components and the Supplemental Components are provided to you by ECM Systems Ltd, then you will be licensed by such entity under the same terms and conditions of this Licence, except that to the maximum extent permitted by applicable law, the supplemental components and any (if any) support services related to the supplemental components are provided as is and with all faults.

### **6. SEPARATION OF COMPONENTS.**

The Software is licensed as a single product. Its component parts may not be separated for use on more than one Computer.

### **7. TERMINATION.**

Without prejudice to any other rights, ECM Systems Ltd may terminate this Licence if you fail to comply with the terms and conditions of this Licence. In such event, you must destroy all copies of the Software and all of its component parts.

### **8. EXCLUSION OF INCIDENTAL, CONSEQUENTIAL AND CERTAIN OTHER DAMAGES.**

To the maximum extent permitted by applicable law, in no event shall ECM Systems Ltd. be liable for any special, incidental, punitive, indirect, or consequential damages whatsoever (including, but not limited to, damages for loss of profits or confidential or other information, for business interruption, for personal injury, for loss of privacy, for failure to meet any duty of good faith or of reasonable care, for negligence, for any losses sustained as a result of failure to correctly obtain and install a licence key and for any other pecuniary or other loss whatsoever) arising out of or in any way related to the use of or inability to use the software, the provision of or failure to provide support or other services, information, software, and related content through the software, or otherwise under or in connection with any provision of this agreement, even in the event of the fault, tort (including negligence), misrepresentation, strict liability, breach of contract and even if ECM Systems Ltd. has been advised of the possibility of such damages.

#### **9. LIMITATION OF LIABILITY AND REMEDIES.**

Notwithstanding any damages that you might incur for any reason whatsoever (including, without limitation, all damages referenced herein and all direct or general damages in contract or anything else), the entire liability of ECM Systems Ltd. under any provision of this agreement and your exclusive remedy hereunder (except for any remedy of repair or replacement elected by ECM Systems Ltd with respect to any breach of the limited warranty) shall be limited to the greater of the actual damages you incur in reasonable reliance on the software up to the amount actually paid by you for the software.

#### **10. APPLICABLE LAW.**

This Licence is subject to the jurisdiction of English Law.

#### **11. SEVERABILITY.**

This Licence (including any addendum or amendment to this Licence which is included with the Software) is the entire agreement between you and ECM Systems Ltd. relating to the Software and the support services (if any) and they supersede all prior or contemporaneous oral or written communications, proposals and representations with respect to the Software or any other subject matter covered by this Licence. If any provision of this Licence is held to be void, invalid, unenforceable or illegal, the other provisions shall continue in full force and effect.



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