

CONDITIONS OF SALE AND SERVICE

1. DEFINITIONS

1.1 In these Conditions, the following expressions shall have the following meanings:

"the Company"	means JCD COMPUTER SYSTEMS LTD and any employee or contractor of JCD COMPUTER SYSTEMS LTD.
"Customer"	means anyone receiving a quotation from and/or placing an order with the Company.
"Consumer"	means Consumer as defined by the Unfair Contract Terms Act 1977.
"Contract"	means any quotation provided to the Customer, these Conditions of Sale and any other document or documents incorporated in a Contract between the Company and the Customer.
"Equipment"	means all and every item of equipment or parts supplied by the Company to the Customer and where relevant includes Software and includes the operating manuals and other documentation supplied.
"Connected Equipment"	means equipment not supplied by the Company but connected (directly or indirectly) to or used in conjunction with the Equipment, the Supported Equipment or the Supported Software.
"Consumable Supplies"	means any consumable supplies to be used on or in conjunction with the Equipment.
"Support Services"	means any works and services provided by the Company its employees or agents including but not limited to telephone technical support and a call-out service.
"Account Customer"	means anyone who has been accepted by the Company as a credit account customer.
"Software"	means all computer programs supplied by the Company (whether originated by the Company or any third party).
"Transgression"	shall mean any breach of contract, or other act default, omission or statement of the Company its employees, agents or subcontractors in respect of which the Company is liable to the Customer.
"Territory"	means the Yellow Pages boundaries for Northampton, Bedford and Milton Keynes.
"Normal Working Hours"	means 9am to 5pm Monday to Friday excluding Bank Holidays and other public holidays.
"Hired Equipment"	means Equipment hired to the Customer by the Company on the terms of a hire agreement.
"Supported Equipment"	means Equipment and any other equipment of the Customer not supplied by the Company in respect of which the Company supplies Support Services.
"Supported Software"	means Software and any other software of the Customer not supplied by the Company in respect of which the Company supplies Support Services.

2. GENERAL

2.1 These Conditions apply to all Contracts between the Company and the Customer. No additions or modifications to or terms inconsistent with these Conditions shall be binding unless agreed in writing by the Company. In the event of any inconsistency between these Conditions and any other document forming part of the Contract, these Conditions shall (subject to Clause 13.2) be paramount unless expressly referred to and varied with the consent of the Company.

2.2 No contract for the supply of the Equipment or Support Services will be created by the acceptance of a quotation or an order until the Company acknowledges the order or commences work on the order. Unless otherwise agreed, quotations are valid for a period of 30 days from their date provided always that a quotation is subject to adjustment at any time because of price changes announced by the Company's own suppliers.

2.3 All prices quoted to Customers are exclusive of VAT.

3. PRICE AND PAYMENT TERMS

3.1 If all or part of the price remains unpaid after the due date, the Company shall be entitled to charge interest on any unpaid balance at 4% above HSBC Bank Plc base lending rate for the time being, such interest being payable in full together with the unpaid balance.

3.2 If the Customer is an Account Customer, payment in full (without any deduction by way of set-off or counterclaim or otherwise) for the Equipment and Support Services shall be due and payable on or before 30 days of the date of the Company's invoice to the Account Customer. If all or part of the price remains unpaid after the due date, the Company shall be entitled to charge interest on any unpaid balance at 4% above HSBC Bank Plc base lending rate for the time being, such interest being payable in full together with the unpaid balance.

3.3 Where payment is made by cheque and the cheque is stopped by the Customer before payment the Company reserves its statutory rights to sue the Customer for the value of the cheque.

4. TITLE

4.1 Legal ownership of the Equipment is to remain vested in the Company until the sums payable under the Contract and any other contracts between the Customer and the Company have been paid in full. If the Customer obtains possession of the Equipment prior to such payment, the Customer shall hold the Equipment in a fiduciary capacity in a separate and identifiable form.

4.2 Notwithstanding Clause 4.1, the Company shall be entitled to maintain an action for the price at any time after the date when payment is due.

5. PERFORMANCE AND FORCE MAJEURE

5.1 The Company takes all reasonable steps to perform its obligations and deliver within the time specified but such times are estimates only. The Company shall not be liable for late performance or delivery.

5.2 Without prejudice to the generality of Clause 5.1, the Company shall have no liability for any delay or default in performance of any obligation caused directly or indirectly by breakdown or unavailability of parts, inability to obtain sufficient labour or sufficient skilled labour or any other cause or causes beyond the Company's reasonable control. If such cause or causes prevent delivery for four weeks or more beyond the due date for delivery, either party may cancel the order on giving written notice to the other at least 28 days before the order may reasonably be expected to be completed.

6. DELIVERY AND INSTALLATION

6.1 All prices quoted by the Company are exclusive of delivery unless expressed to the contrary.

6.2 The Company reserves the right to deliver the Equipment in more than one shipment.

- 6.3 If the Customer fails to take delivery of the Equipment notwithstanding any previous notification by the Company the Customer shall be liable for all expenses incurred by the Company in handling and storing the Equipment (including the cost of insurance).
- 6.4 The Company shall be entitled to resell or otherwise dispose of Equipment which the Customer has failed to accept delivery of within 7 days of notification that the Equipment is ready for despatch. Such right is without prejudice to any other rights the Company may have against the Customer for breach of contract or otherwise.
- 6.5 If the quotation or invoice states that the Equipment shall be installed by the Company the Customer shall provide (by not later than the date the Company specifies and until the installation is complete maintain) such facilities at the agreed installation site (including suitable environmental conditions) for the installation of the Equipment as the Company may specify in writing. The Company reserves the right to charge the Customer any costs incurred as a result of the failure of the Customer to produce or secure the provision of agreed facilities and/or resources necessary to allow the Company to complete any installation within the agreed time scales. The Customer will be responsible for any consequential costs (whether incurred by it or the Company) due to its delay in the provision of a suitable installation site.
- 6.6 All Equipment is supplied with the manufacturer's standard length cabling. The quotation unless specific does not include any extension leads, cabling, trunking, plugs, sockets or any additional work undertaken by the Company to install recess or channel cabling within the Customer's premises.
- 6.7 If an installation charge is shown in the quotation such charge is based on installation during Normal Working Hours. Where no installation charge is shown the installation/setting to work of the Equipment is the responsibility of the Customer. The Company reserves the right to charge the Customer any costs incurred as a result of installation outside Normal Working Hours.

7 CALL-OUT SERVICE

- 7.1 Where a Customer is situated within the Territory and an engineer is sent to diagnose their system, no call-out fee is charged. Where a Customer is situated outside the Territory and an engineer is sent to diagnose their system, then a call-out charge will be incurred and is payable at the Company's standard call-out rate from time to time.
- 7.2 **If the engineer cannot repair the Customer's system there is no fee charged for the engineer's time. However, where a diagnosis is made and a quote is given as a result and that quote is refused by the Customer, the Customer is liable to pay for the time spent by the engineer in diagnosing the problem at the Company's standard rate from time to time.**
- 7.3 Any parts or Consumable Supplies provided to the Customer by an engineer on a call-out are not included in and are charged in addition to the call-out and engineer's charge.

8. TECHNICAL SUPPORT

- 8.1 Telephone technical support is available for Supported Equipment and Supported Software. The technical support comprises 'first line' support based on remote questioning. If the technical support fails to resolve the problem then a call-out service will be available to carry out further tests.
- 8.2 Telephone technical support is available free of charge during Normal Working Hours for

Equipment and/or Software for one year from the purchase of Equipment and/or Software. This technical support is renewable after this period of one year at the Company's standard rate at that time by giving notice to the Company on or before a date 7 days before the support is due to elapse.

- 8.3 If technical support is provided outside Normal Working Hours it is chargeable at the Company's standard rate from time to time. Technical support provided for equipment or software not supplied by the Company is charged at the Company's standard rate from time to time.

9. TERMS AND REPRESENTATIONS

9.1 THESE CLAUSES DEFINE THE CUSTOMERS RIGHTS IN RESPECT OF ANY LOSS OR DAMAGE CAUSED BY THE EQUIPMENT, THE SUPPORT SERVICES, OR ANY STATEMENTS MADE BY THE COMPANY OR ITS EMPLOYEES OR AGENTS. CUSTOMERS ARE ADVISED TO READ THESE PROVISIONS CAREFULLY.

9.2 The Company agrees to repair or replace Equipment found to be defective within 12 months from the date of supply provided that each of the following are satisfied:

- (i) notification of any defect being given to the Company as soon as reasonably possible upon it becoming apparent;
- (ii) the Equipment having been operated under normal operating conditions using suitable programs, materials, power supply and lubricants (where necessary);
- (iii) the part being shown to have been defective at the date of despatch ex. the Company's premises and due to faulty workmanship or defective materials;
- (iv) any defective parts replaced being the property of the Company;
- (v) any other terms of the manufacturer's warranty being fully and properly satisfied;
- (vi) the defect is not a result of any viruses or programs downloaded from the internet or installed by the Customer after the date of sale;
- (vii) the defect is not attributable to any Connected Equipment.

9.3 At the Company's request the Customer may return the Equipment to the Company to be repaired or replaced. The Customer shall be liable for the costs of carriage both to and from the Company if the computer is found not to have an inherent fault.

9.4 The Company agrees to re-provide Support Services found to be defective within 1 month from the date of supply provided that each of the following are satisfied:

- (i) notification of any defect being given to the Company as soon as reasonably possible upon it becoming apparent;
- (ii) the Supported Equipment having been operated under normal operating conditions using suitable programs, materials, power supply and lubricants (where necessary);
- (iii) the Customer has not neglected or misused the Supported Equipment and has operated the Supported Equipment in accordance with the Company's or the Manufacturer's instruction manuals or for the purposes for which it was designed;
- (iv) there has been no alteration modification or maintenance of the Supported Equipment since the supply of Support Services by any party other than the Company without the Company's prior consent;
- (v) there has been no use of defective or inappropriate supplies with the Supported Equipment;
- (vi) the Supported Software has not been improperly used, operated or neglected or used for a purpose for which it was not designated;
- (vii) there has been no modification of the Supported Software or merger of it (in whole or in part) with any other software;

- (viii) the Customer has implemented all recommendations in respect of or solutions to faults previously advised by the Company;
- (ix) any repair adjustment alteration or modification of the Supported Software has not been undertaken by any person other than the Company since the supply of Support Services;
- (x) the Supported Equipment has not been painted or refinished;
- (xi) there has been no modification or alteration of or attachment to the Supported Equipment or removal of the same;
- (xii) the defect is not a result of any viruses or programs downloaded from the internet or installed by the Customer since the supply of Support Services;
- (xiii) the defect is not attributable to any Connected Equipment.

9.5 The Company is not liable for any loss of data as a result of the Company providing the Support Services. The Customer is responsible for backing up data prior to the Support Services being required.

9.6 The Company is not liable for any damage or loss caused to the Supported Equipment or the Supported Software after the Company has carried out repairs or Support Services if the damage is caused by any component, part or software that was not the subject of the repairs or Support Services.

9.7 The Company accepts liability:

9.7.1 for death or personal injury to the extent that it results from the negligence of the Company or its employees (whilst in the course of their employment);

9.7.2 for any breach by the Company of any statutory undertaking as to title, quiet possession and freedom from encumbrance.

9.8 If the Customer is not a Consumer:

9.8.1 to the extent that the Company is held legally liable to the Customer for any single Transgression, the Company's liability for the same shall not exceed the value of the Contract (or, if less the value of the particular advice item or component the subject of the Transgression) provided that a number of Transgressions, whether successive or concurrent, which together result in or contribute to substantially the same loss or damage shall be treated as a single Transgression; and

9.8.2 all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

9.9 If the Customer is a Consumer then none of 9.7 above applies and nothing in these Conditions affects the Customer's statutory rights.

9.10 In the event of any exclusion or limitation of liability or any other provision contained in Clause 9 or otherwise contained in these Conditions being held invalid under any applicable statute or rule of law, it shall to that extent be deemed omitted, but if the Company thereby becomes liable for any defect or loss, damage, nuisance, interference whatsoever consequential or otherwise or wastage of materials which would otherwise have been excluded such liability shall be subject to the other exclusions limitations or provisions set out in Clause 9.

9.11 The Company shall not be liable for any consequential loss or loss of profit suffered by the Customer as a result of any Transgression.

10. HIRED EQUIPMENT

- 10.1 From the time when the Hired Equipment is despatched from the Company's premises the risk of any loss, damage to or deterioration of the Equipment shall be and remain with the Customer, notwithstanding that the Company may arrange carriage. The Company shall be under no liability arising from its choice of carrier or from any act or omission of such carrier. The Customer shall give a minimum of 30 days notification of the site to which delivery is required and the delivery date.
- 10.2 All repairs to the Hired Equipment must be undertaken by the Company and the Customer will pay the costs of the Company in repairing the Hired Equipment unless it's an inherent fault.
- 10.3 The Customer must insure the Hired Equipment to its full reinstatement value and indemnify the Company for any loss of or damage to the Hired Equipment.

11. CONFIDENTIALITY AND COPYRIGHT

- 11.1 Copyright in all material furnished or disclosed to the Customer by the Company in connection with the sale or proposed sale of Equipment or supply of Support Services (save as may be reserved by the Company's Supplier or by the manufacturer) is the exclusive property of the Company. The Customer will not use any such material except as necessary in connection with the installation, testing, operation and maintenance of the Equipment. The Customer shall keep confidential all such material and will use its best endeavours to prevent the disclosure and dissemination of any such material to any person or entity other than its employees.

12. ASSIGNMENT/SUB-CONTRACTING

- 12.1 The Contract is not capable of assignment by the Customer and the Software and manuals shall not be assigned, copied, sub-licensed or transferred by the Customer.
- 12.2 The Company may assign any of its rights and may sub-contract its obligations under this Contract.

13. SOFTWARE

- 13.1 It shall be a condition of any contract entered into by the Company where the Equipment includes Software that the Customer shall immediately upon becoming bound by the Contract accept the Software on licence on the terms of the standard user licence supplied by the supplier of the software, a copy of which is available on request.
- 13.2 These Conditions shall (save where inconsistent with Clause 13.1) apply to the supply of Software provided that in the event of any inconsistency between these Conditions as they relate to the supply of Software and the provisions of the user licence or Conditions of Sale the user licence shall prevail.
- 13.3 The Company may terminate forthwith by notice the Customer's user licence:
 - 13.3.1 if the Customer acts or allows any act to be done which in the Company's reasonable opinion may jeopardise the Company's rights in the Software and in particular without prejudice to the generality of the foregoing:
 - (i) if the Customer makes any unauthorised copies of the Software or any part of it by any means or for any purpose whatsoever without the prior written consent of the Company. The Customer may make such number of back up copies of the Software as may be agreed

with the Company in line with normal operating procedures for use only where his principal copy becomes damaged. All other copies are unauthorised;

- (ii) if the Customer divulges the contents of the Software or the method of its operation to any third party without the prior written consent of the Company;
- (iii) if the Customer defaces removes obliterates or alters any mark name symbol or device indicating ownership copyright trademark or other proprietary rights in connection with the Software or its use;

13.3.2 where the Company maintains the hardware upon any breach by the Customer of the conditions relating to the provision of the maintenance service;

13.3.3 where the Customer is in breach of any of the terms of this Agreement.

13.4 Upon such termination of the Customer's user licence the Customer shall return all copies of the Software including any copies held for archiving or other purposes and shall on request certify in writing that such actions having been taken.

14. TERMINATION

14.1 The Company shall be entitled to terminate all or any of its Contracts with the Customer forthwith and recover all losses or damage resulting to the Company (including but without limitation to loss of profit or other consequential loss) if:

- (i) the Customer has a bankruptcy petition presented against him, or a bankruptcy order is made, if the Customer makes or seeks to make any composition or arrangement with his creditors, if the Customer makes a proposal to his creditors for a voluntary arrangement or applies for an interim order, if an encumbrancer takes possession of any of the Customers assets, or any of the Customers assets are taken in execution or process of law, if a petition is presented or an order is made or a resolution is passed for the winding up of the Customer, if a petition is presented or an order is made for an administration order to be made in relation to the Customer, or if a receiver or administrative receiver is appointed over any of the Customers assets; or
- (ii) the Customer fails to make any payment owed to the Company on the due date; or
- (iii) the Customer is in breach of any contract with the Company (including the Contract) and fails to remedy the same within twenty-one days of notice so to do or immediately if the breach shall be unremediable.

14.2 The Customer may only cancel an order for Equipment where the Company has given prior consent and has received written confirmation of the cancellation before the relevant Equipment is despatched.

15. NOTICES

15.1 Any notice required under the Contract shall be deemed served if sent by registered or recorded delivery post or by facsimile addressed to the party for whom it is intended at such party's registered or main office or last known address and shall be deemed to have been served 48 hours after the date of posting or 12 hours after the time of transmission if by facsimile.

16. LEGAL CONSTRUCTION, INTERPRETATION AND LIMITS OF THE CONTRACT

- 16.1 The Contract shall be governed in all respects by English Law and unless clause 16.4 applies shall be subject to the jurisdiction of the English Courts. The text of the Contract and these Conditions written in the English language is the authentic text and any difficulties or uncertainties arising shall be solved solely by reference to that text.
- 16.2 Save for statement or representations confirmed in writing in the Contract, no oral statements of whatsoever nature and by whomsoever made (including those made in training) shall form part of the Contract. In contracting with the Company the Customer acknowledges that he has not relied on any oral statements or representations made to him save those confirmed as aforesaid.
- 16.3 Clause headings are for convenience only and do not affect the construction of this document.

Dated November 2003

JCD COMPUTER SYSTEMS LTD

STANDARD CONDITIONS

OF SALE AND SERVICE

HOWES PERCIVAL
S O L I C I T O R S

LEICESTER · MILTON KEYNES · NORTHAMPTON · NORWICH

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