



IT Consultancy & Web Services

Business | Domestic | Support | Repairs | Hardware | Software | Maintenance | CCTV | Web Hosting | Broadband | Consultancy

## Standard Terms and Conditions of Sale

Revision 08.2010

■■■ EXCELLENCE IN IT SINCE 2001 ■■■

**Mellow Marsh Software Ltd** Hermes House, 5 Heritage Park, Hayes Way, Cannock WS11 7LT  
**Telephone:** 01902 544135 **Fax:** 01902 544134 **Email:** [admin@mellowms.co.uk](mailto:admin@mellowms.co.uk) **Web:** [www.mellowms.co.uk](http://www.mellowms.co.uk)

Registered in England & Wales No. 4221216. VAT Reg. No. GB 903 8253 35

## **TERMS AND CONDITIONS**

### **DEFINITIONS**

In these Terms and Conditions the following expressions shall have the meanings ascribed to them below:

- (1) "the Company" means Mellow Marsh Software Limited, whose registered office is at Hermes House, 5 Heritage Park, Hayes Way, Cannock, WS11 7LT.
- (2) "the Buyer" means the legal entity with whom the Contract is made by the Company;
- (3) "the Equipment" means the hardware, software, manuals, documentation, accessories, or articles or any of them (including any replacements or renewals thereof, additions thereto and substitutions thereof) described in the Equipment Schedule;
- (4) "the Equipment Schedule" means the schedule identifying the Equipment which is the subject of the Contract;
- (5) "the Contract" means the contract between the Company and the Buyer for the sale and purchase of the Equipment comprising these Conditions and the Equipment Schedule.

### **2. STATUS OF TERMS AND CONDITIONS**

- (1) These Terms and Conditions shall be incorporated in all contracts between the Company and Buyer for the sale of Equipment to the exclusion of all other terms and conditions and communications between the Company and the Buyer. In the case of any inconsistency between these Terms and Conditions and the Equipment Schedule, the provisions of these Terms and Conditions shall prevail. Variations of the Contract shall be effective only if agreed in writing by a director of each of the parties and will then prevail over these Terms and Conditions.
- (2) The Contract constitutes the entire agreement between the Buyer and the Company for the sale of the Equipment and supersedes all prior or other arrangements relating to such sale and no statement, description, information, warranty, condition, or recommendation contained in any price-list, advertisement, documentation or communication or made verbally by any of the agents or employees of the Company shall be construed so as to extend, vary or override any provisions of this Contract in any way.

### **3. SPECIFICATIONS**

Specifications, dimensions and other product details are given in good faith and the Company will endeavour to ensure that the Equipment supplied to the Buyer complies with such specifications, dimensions and other product details. However, it may not be possible

for the Company to control minor deviations from specifications, dimensions and other product details and therefore it reserves the right in such cases to supply Equipment of substantially similar specifications, dimensions and other product details.

#### **4. PRICES**

- (1) Prices are valid as shown and are subject to variation without notice. The Company reserves the right to withdraw products from sale unless payment has been received in accordance with Clause 5.
- (2) Delivery is subject to availability of stock. In no circumstances will be the Company be liable for delays in delivery.
- (3) Unless otherwise stated, all prices are exclusive of the costs of carriage, insurance and collection (as appropriate) all of which shall be payable by the Buyer.
- (4) Unless otherwise stated, all prices are exclusive of Value Added Tax which shall be payable by the Buyer at the then applicable rate.
- (5) The Company reserves the right to increase the price of Equipment to reflect any change in delivery dates, quantities or specifications which is requested by the Buyer, or any delay caused by the Buyer or any failure of the Buyer to perform its obligations for the Equipment or to give the Company adequate information or instructions.
- (6) No order for Equipment which has been accepted by the Company may be cancelled by the Customer except with the agreement in writing of the Company and on terms that the Buyer shall reimburse the Company for all costs and liability incurred by it in relation to such cancellation (including loss of profit and the cost of all labour and materials used or appropriated to the Contract) provided that the Buyer's liability in this respect shall not exceed 10% of the total price stated in the order.

#### **5. PAYMENT TERMS**

- (1) The Company does not grant credit facilities automatically. Should the Company grant the Buyer credit facilities, payment of all charges shall be made strictly within 30 days of the invoice date. If the Buyer is not granted a credit account then payment is to be made on or before the invoice date.
- (2) Payment in full shall be made by the date specified on the invoice and the Buyer shall not be entitled to exercise any set-off, lien, counterclaim, cross demand or any other similar right or claim whatsoever.
- (3) The time of payment shall be of the essence of the Contract.
- (4) The Company reserves the right to withdraw credit facilities at any time and without notice.

- (5) Without prejudice to any other rights it may have the Company is entitled to charge interest on any unpaid invoices at the applicable rate as prescribed in the Late Payment of Commercial Debt (Interest) Act 1988, such interest to run from the due date for payment until the date when payment in full is received, whether before or after judgment has been obtained and the Company may cancel the Contract and suspend further deliveries to the Buyer.

## **6. RISK AND DELIVERY**

- (1) Risk of loss of or damage to the Equipment will pass to the Buyer upon delivery of the Equipment to the Buyer. The Company shall affect delivery of the Equipment by informing the Buyer that the Equipment is ready for delivery and depositing it at the place for delivery stated in the Equipment Schedule.
- (2) If the Buyer fails to take delivery or to give adequate delivery instructions then, without prejudice to its other rights and at the Buyer's expense, the Company may store and/or dispose of the Equipment. Any shortfall in disposal proceeds below the Contract price shall be paid by the Buyer to the Company.
- (3) If the Buyer agrees that Equipment may be delivered in instalments, each such instalment shall constitute a separate Contract which may be separately invoiced. Any delay in delivery or termination of any instalment will not entitle the Buyer to terminate the Contract as a whole, nor permit the set off of any payments in respect of one delivery against any claim in respect of any other delivery.

## **7. TITLE**

Notwithstanding the passing of risk under 6 above, title will only pass to the Buyer when payment has been made to the Company of all sums due to it for the Equipment and/or under any other contract between the Buyer and Company on any account whatsoever. If payment has already been received in full then title passes to the Buyer upon delivery. Until such time as property in the Equipment passes to the Buyer, the Buyer shall:

- (a) hold the Equipment as the Company's fiduciary agent and bailee;
- (b) keep the Equipment properly stored, insured and identified as the Company's property; and
- (c) the Company shall have a lien over any of the Buyer's assets in its possession or control.

## **8. WARRANTIES AND LIMITATIONS OF LIABILITY**

- (1) Subject to clause 8(4), the parties agree that the implied warranties of merchantability and fitness for a particular purpose and all other warranties whether express or implied including without limitation, warranties as to description accuracy, quality or productiveness, are excluded from the Contract and shall not apply to the Equipment.

For the avoidance of doubt, subject to clause 8(4), any oral or other statements about the Equipment not included in these Terms and Conditions do not constitute warranties, may not be relied upon by the Buyer and are not part of the Contract.

- (2) Subject to clause 8(3), if within 30 days of delivery any Equipment proves defective or unsatisfactory under normal use the Company's entire liability to the Buyer shall be satisfied by its refunding the price paid for the Equipment in question.
- (3) The Buyer shall be entitled to a refund under clause 8(2) provided that:
  - (a) the Equipment has been used solely for its proper purpose and in accordance with the operating instructions;
  - (b) the defect has not been caused by fire, accident, misuse, neglect, incorrect installation by the Buyer or its Buyers, agents or servants, unauthorised alteration, repair or maintenance or the use of sub-standard consumables;
  - (c) the defect has not arisen from any design, specification, component or material supplied by or on behalf of the Buyer;
  - (d) no part of the Equipment have been replaced with a part not supplied or approved by the Company;
  - (e) payment in full of all sums due in respect of the Equipment has been made; and
  - (f) the Buyer has complied with clause 9(3)
- (4) Nothing in the Contract shall exclude or limit any liability for death or personal injury caused by the negligence or wilful default of the Company, its employees or agents, or for fraudulent misrepresentation, or for any other liability which may not be excluded or limited by law.
- (5) Subject to clause 8(4), the maximum aggregate liability of the Company and its officers, employees and agents for all claims whether arising in contract, tort, breach of statutory duty or otherwise made by the Buyer in respect of or arising from any Contract shall not exceed the amount paid by the Buyer for the Equipment supplied pursuant to such Contract.
- (6) Without limiting the foregoing but subject to clauses 8(4) and 8(8), the Company shall not be liable for any special, incidental or consequential losses or damages (including without limitation loss or diminution in value of any items held, worked on or processed by the Company; loss of profit, revenue, use, anticipated savings or goodwill; loss or corruption of data; business interruption; management costs or third party liability).
- (7) The Buyer shall take all precautions to protect its data and shall ensure that a regular data back-up arrangement is implemented before and during the Contract. The Buyer shall be responsible for restoring any lost or corrupted data unless such loss is caused

by the negligence or wilful default of the Company in which case the Company's liability shall be limited to the reinstatement where possible of all data proven to have been lost or irremediably corrupted and which would not have been included in such back-up arrangements required to be maintained by the Buyer.

## **9. CONDITION ON DELIVERY**

- (1) Unless the Company is notified in writing by the Buyer within 24 hours after delivery of the Equipment, it shall be conclusively presumed that the Equipment was delivered in a good operating condition and in complete accordance with the manufacturer's description and the Buyer's requirements and the Equipment shall be deemed to have been accepted.
- (2) The Buyer agrees that the Equipment may be delivered using standard packaging, and that the original packaging may not be available or suitable for delivery.
- (3) The Buyer may only return Equipment to the Company if the Equipment is proven to be faulty within 30 days of shipment and upon receipt of an authorised Company RMA number. The Buyer shall return the Equipment at his own expense.

## **10. TERMINATION OF CONTRACT**

10. (1) This clause applies if:

- (a) if any person takes steps to seize attach arrest or sequester the Equipment before title to the Equipment has passed to the Buyer in accordance with these Terms and Conditions;
  - (b) if the Buyer ceases or threatens to cease to carry on business or is subject to any legal proceedings in which its solvency is in question or has any process of distress or execution levied against it or calls a meeting of, or enters into any composition or arrangement with, its creditors;
  - (c) if the Buyer being an individual shall die or being a partnership shall be dissolved or if the Buyer (or where the Buyer is a partnership if any partner thereof) shall suffer an interim order (within the meaning of the Insolvency Act 1986 or any statutory modification or re-enactment thereof) to be made against him or suffer the making of a statutory demand or commit any act of bankruptcy or if a bankruptcy petition be presented against him;
  - (d) if, the Buyer being a company, any resolution or petition to wind up such company shall be passed or presented or if a receiver, administrative receiver or administrator shall be appointed over the whole or any such part of such company's undertaking, property or assets.
- (2) If this clause applies then without prejudice to any other right or remedy available to the Company shall be entitled to cancel the Contract or suspend any further deliveries

under the Contract without any liability to the Buyer. Any credit facilities will automatically be withdrawn and any unpaid invoices shall become due and payable immediately and interest bearing pursuant to clause 5(5).

## **11. FORCE MAJEURE**

The Company shall be entitled to delay or cancel delivery or to reduce the amount delivered if it is prevented from or hindered in or delayed in obtaining or delivering the Equipment by the normal route or means of delivery through any circumstances beyond its control including but not limited to strikes, lockouts or any other form of industrial action, accidents, war, fire, reduction in or unavailability of power at manufacturing plant, breakdown of plant machinery or shortage or unavailability of raw materials or labour from normal sources of supply.