

## Man and Machine Ltd Terms and Conditions of Sale

Your purchase is subject to your acceptance of these Terms and Conditions, and your order shall be deemed as your acceptance thereof.

### 1 Definitions

- 1.1 "Man and Machine" means Man and Machine Ltd of Unit 8, Thame 40, Jane Morbey Road, Thame, Oxfordshire, OX9 3RR or any subsidiary or associated company
- 1.2 "Customer" means the party identified as the Customer in this Agreement to whom Man and Machine may agree to supply Products and Services in accordance with these terms and conditions
- 1.3 "Products" means goods including, but not limited to, computer software, vendor subscriptions and computer hardware to be supplied by Man and Machine to the Customer in accordance with these terms and conditions
- 1.4 "Services" means services including, but not limited to training, consultancy, installation, software development and support services supplied by Man and Machine to the Customer in accordance with these terms and conditions.

### 2 Orders and Acceptance

- 2.1 All orders placed with Man and Machine by the Customer for Products and Services constitute an offer to Man and Machine, under these terms and conditions, subject to availability of the Products and Services and to acceptance of the order by Man and Machine's authorised representative
- 2.2 Orders are only considered as accepted by Man and Machine when the Customer receives an order acknowledgement from Man and Machine.
- 2.3 All orders are accepted and Products and Services supplied subject to these express terms and conditions only. No amendment to these terms and conditions is valid unless Man and Machine's authorised representative confirms it in writing after the date of acceptance
- 2.4 These terms and conditions will prevail over the Customer's terms and conditions of purchase unless these terms and conditions are amended by Man and Machine in writing and signed by a duly authorised representative of Man and Machine.

### 3 Despatch, Delivery and Inspection

- 3.1 Unless otherwise agreed, Man and Machine will deliver Products to the address specified on the Customer's purchase order.
- 3.2 Any time quoted for despatch is to be treated as an estimate only.
- 3.3 The Customer will make all necessary arrangements to take delivery of the Products when tendered for delivery, and if delivery is not possible due to the Customer's failure to make all necessary arrangements to take delivery, the Customer will be liable for any associated storage cost or further delivery costs.
- 3.4 Despatch may be postponed because of conditions beyond Man and Machine's reasonable control, and in no event is Man and Machine to be liable for any damages or penalty for delay in despatch or delivery.
- 3.5 Man and Machine accept no liability for Products that are delivered damaged or faulty unless Man and Machine is informed within 3 days of delivery.
- 3.6 In the event that Man and Machine accepts that the Products are to be replaced or a credit note issued, Man and Machine is under no obligation to provide any replacement Products or to issue a credit note until the Products have been returned to Man and Machine in their original condition with all packaging and documentation.

### 4 Cancellations and rescheduling

- 4.1 Subject to the provisions of clause 4.5 below, Man and Machine will only consider requests for cancellation or rescheduling of orders for Products that have not yet been despatched, and where Man and Machine has not already incurred costs. Man and Machine may (at its absolute discretion) either accept or reject such requests and may make an administration charge.
- 4.2 Subject to the provisions of clause 4.5 below, Man and Machine cannot accept cancellation of orders for bespoke or modified Products, once the order has been passed on to Man and Machine's suppliers.
- 4.3 Subject to the provisions of clause 4.5 below, if the Customer cancels an order for Services, Man and Machine will invoice the Customer for any work undertaken to that point (and any costs or expenses incurred).

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- 4.4 Subject to the provisions of clause 4.5 below, the Customer agrees to indemnify Man and Machine against all proper and reasonable losses, costs, damages, charges and expenses arising out of the cancellation or rescheduling of the order
- 4.5 Where the Customer is dealing as a consumer, in the event that the Customer wishes to cancel, amend or postpone the order, the Customer must notify Man and Machine in writing within 14 working days of making the order. The Customer acknowledges and agrees that if it requests Man and Machine to commence work on the Customer's order within the 14 working day period referred to above, the Customer shall have no right to cancel, amend or postpone the order.

## 5 Pricing

- 5.1 The price of the Products and Services shall be the price stated on the quotation, or such other price as may be agreed in writing between Man and Machine and the Customer. All quotations are valid for thirty days unless otherwise stated on the quotation.
- 5.2 Situations may arise outside of Man and Machine's control (for example, but not limited to, exchange rate fluctuations), causing us to require a change in price between quotation and fulfilment of the order and in such cases the price shall be amended accordingly and the Customer shall be responsible for payment in full of the same. Man and Machine may advise of any such situations at any time up to the point of delivery.
- 5.3 All prices are exclusive of Value Added Tax and any other applicable taxes or levies. All such taxes or levies are payable by the Customer and will be applied in accordance with UK legislation (or such other legislation as may be applicable) in force at the tax-point date.
- 5.4 Any technical or other errors relating to online purchasing can, at Man and Machine's discretion, render the order and contract void.

## 6 Payment Terms

- 6.1 Invoices are payable within 30 days of the invoice date, unless otherwise agreed and stated on the quotation.
- 6.2 The amount paid against an invoice can only be reduced by the application of a Man and Machine credit note, not by Customer generated debit notes.
- 6.3 If the Customer does not settle invoices by the due date or fails to keep within agreed credit terms Man and Machine may suspend delivery of current orders and / or withdraw or amend credit facilities and/or cease or suspend the supply of Services.
- 6.4 If payment is not received by the due date Man and Machine will charge interest on overdue payments at the rate of 4% per annum above the prevailing HSBC bank base rate. Such interest will accrue on a daily basis and be payable on demand both before and after judgement.

## 7 Title

- 7.1 Title to Products only passes to the Customer when the Customer has paid in full all prices, taxes and charges due in respect of the Products.
- 7.2 Until Title passes to the Customer, the Customer must keep the Products properly stored, protected and insured and identified as Man and Machine's property.
- 7.3 Until Title passes to the Customer, Man and Machine is entitled at any time to demand the return of the Products to Man and Machine. If the Customer fails to do so forthwith, Man and Machine may enter upon any premises of the Customer or any third party where the Products are stored and repossess the Products.

## 8 Specification of Products

- 8.1 The Customer acknowledges and agrees that any description which is given or applied to the Products:
  - 8.1.1 is only for the purpose of identifying the products; and
  - 8.1.2 shall not make this agreement a sale by description; and
  - 8.1.3 is not relied on by the Customer when entering into this agreement
- 8.2 Man and Machine will not be liable in respect of any loss or damage caused by or resulting from:
  - 8.2.1 any variation for whatsoever reason in the manufacturer's specifications or technical data; or
  - 8.2.2 curtailment or cessation of supply following such variation
- 8.3 Man and Machine will advise the Customer of any such impending variation as soon as the manufacturer notifies Man and Machine

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- 8.4 Unless otherwise agreed, Man and Machine supplies the Products in accordance with the manufacturer's standard specifications as these may be improved, substituted or modified from time to time.

## 9 Services in General

### 9.1 General

- 9.1.1 Where software is to be loaded onto hardware not supplied by Man and Machine, Man and Machine can make no guarantees as to the performance of the software on such equipment.
- 9.1.2 Man and Machine cannot accept liability for the failure of installed software or hardware where that failure is caused by the Customer's equipment which has not been installed or checked by Man and Machine.

### 9.2 Customer's Obligations

- 9.2.1 To enable Man and Machine to perform its obligations under this Agreement the Customer shall
- 9.2.1.1 co-operate with Man and Machine;
  - 9.2.1.2 provide Man and Machine with any information reasonably required by Man and Machine;
  - 9.2.1.3 obtain all necessary permissions and consents which may be required before the commencement of the services; and
  - 9.2.1.4 comply with such other requirements as may be set out in the Service Specification or otherwise agreed between the parties.
- 9.2.2 The Customer shall be liable to compensate Man and Machine for any expenses incurred by Man and Machine as a result of the Customer's failure to comply with Clause 9.2.1
- 9.2.3 In the event that the Customer or any third party, not being a sub-contractor of the Man and Machine, shall omit or commit anything which prevents or delays Man and Machine from undertaking or complying with any of its obligations under this Agreement, then Man and Machine shall notify the Customer as soon as possible and:
- 9.2.3.1 Man and Machine shall have no liability in respect of any delay to the completion of any project;
  - 9.2.3.2 if applicable, the timetable for the project will be modified accordingly;
  - 9.2.3.3 Man and Machine shall notify the Customer at the same time if it intends to make any claim for additional costs.

### 9.3 Intellectual Property Rights

- 9.3.1 Unless agreed in writing to the contrary, all Intellectual Property Rights produced from or arising as a result of the performance of this Agreement shall, so far as not already vested, become the absolute property of Man and Machine, and the Customer shall do all that is reasonably necessary to ensure that such rights vest in Man and Machine by the execution of appropriate instruments or the making of agreements with third parties.

### 9.4 Subcontracting and assignment

- 9.4.1 Man and Machine shall be entitled to engage subcontractors to provide all or part of the services being provided to the Customer, without prior consent from the Customer and such engagement shall not relieve Man and Machine of its obligations under this Agreement
- 9.4.2 Man and Machine and the Customer are contractors independent of each other, and neither has the authority to bind the other to any third party or act in any way as the representative of the other, unless otherwise expressly agreed to in writing by both parties.

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### 10 Training Courses

- 10.1 Training courses must be paid for in advance of attendance.
- 10.2 All cancellations must be notified in writing. Man and Machine reserve the right to make the following charges:-
  - 10.2.1 25% cancellation fee if the training is within 11-30 days of the cancellation,
  - 10.2.2 Non-Refundable if training is within 10 working days of the cancellation.
- 10.3 Man and Machine reserve the right to reschedule courses. In the event of this happening, delegates will be offered an alternative arrangement. If no alternative can be agreed Man and Machine Ltd will refund any fees paid.
- 10.4 No responsibility will be accepted by Man and Machine Ltd for the selection of an inappropriate course.
- 10.5 Each course outline specifies prerequisite requirements, and Man and Machine reserve the right to exclude any delegate that does not display this level of knowledge. A course refund will not be available in this situation. The delegate can be booked on the same course at a future date when the prerequisite requirements have been met.

### 11 Support Services

- 11.1 The Support Service offered by Man and Machine is intended to assist in identification and resolution of problems encountered by the Customer relating to software functionality. Man and Machine provides Support Services under the service level agreements defined in our separate document "Man and Machine TechCare Support - Service Level Agreement"
- 11.2 Man and Machine may at its discretion escalate support cases to third party software vendors.
- 11.3 The Support Service does not cover:
  - 11.3.1 user application training
  - 11.3.2 loss of Customer generated software programs, data and information;
  - 11.3.3 work at the Customer's request outside of the Service Hours;
  - 11.3.4 faults reported by the Customer which are not covered by the purchased level of support.

### 12 Consultancy and other Professional Services

- 12.1 General
  - 12.1.1 Before the commencement of the services Man and Machine shall submit to the Customer a Service Specification which shall specify the services to be performed and the fees payable. The Customer shall notify Man and Machine immediately if the Customer does not agree with the contents of the Service Specification. All Service Specifications shall be subject to these Terms and Conditions.
  - 12.1.2 Man and Machine shall use all reasonable endeavours to complete the services within estimated time frames but time shall not be of the essence in the performance of any services.
  - 12.1.3 Without prejudice to any other rights to which Man and Machine may be entitled, in the event that the Customer unlawfully terminates or cancels the services agreed to in the Service Specification, the Customer shall be required to pay to Man and Machine as agreed damages and not as a penalty the full amount of any third party costs to which Man and Machine has committed and in respect of cancellations on less than five working days' written notice the full amount of the services contracted for as set out in the Service Specification, and the Customer agrees this is a genuine pre-estimate of Man and Machine's losses in such a case. For the avoidance of doubt, the Customer's failure to comply with any obligations under Clause 9.2.1 shall be deemed to be a cancellation of the services and subject to the payment of the damages set out in this Clause.
- 12.2 Alterations to the Service
  - 12.2.1 The parties may at any time mutually agree upon and execute new Service Specifications. Any alterations in the scope of services to be provided under this Agreement shall be set out in the Service Specification, which shall reflect the changed services and fees and any other terms agreed between the parties.
  - 12.2.2 The Customer may at any time request alterations to the Service Specification by notice in writing or via email to Man and Machine, using our Change Control Notification process. On receipt of the

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request for alterations Man and Machine shall, within 5 working days or such other period as may be agreed between the parties, advise the Customer by notice in writing of the effect of such alterations, if any, on the fees and any other terms already agreed between the parties.

12.2.3 Where Man and Machine gives written notice to the Customer agreeing to perform any alterations on terms different to those already agreed between the parties, the Customer shall, within 5 working days of receipt of such notice or such other period as may be agreed between the parties, advise Man and Machine by notice in writing whether or not it wishes the alterations to proceed.

12.2.4 Where Man and Machine gives written notice to the Customer agreeing to perform alterations on terms different to those already agreed between the parties, and the Customer confirms in writing that it wishes the alterations to proceed on those terms, the Service Specification shall be amended to reflect such alterations and thereafter Man and Machine shall perform this Agreement upon the basis of such amended terms.

### 13 Warranty

- 13.1 If any part of the Products proves defective in materials or workmanship under normal operation or service, they will be repaired or replaced only in accordance with any warranty cover or terms as provided by the manufacturer of the Products. Man and Machine is not responsible for the cost of labour or other expenses incurred in repairing defective or non-conforming parts.
- 13.2 Man and Machine warrants that the Services performed under this Agreement shall be performed using reasonable skill and care, and of a quality conforming to generally accepted industry standards and practices.
- 13.3 Except as specifically set out in this clause, or where the Customer deals as a consumer, Man and Machine disclaims and excludes all other warranties, whether express or implied, by statute or otherwise, including but not limited to the warranties of description, design, quality and fitness for a particular purpose

### 14 Liability

- 14.1 All Products supplied by Man and Machine are believed to be of satisfactory quality and fit for their purpose. The Customer must however fully satisfy itself that the Products are of the correct specification and designed for the required purpose
- 14.2 The Customer shall only make a claim of any nature, if any, arising out of or in connection with these terms and conditions against Man and Machine and shall not make any claim of any nature against any person or persons involved in the performance of these terms and conditions.
- 14.3 Man and Machine shall not be liable for any defect in any Products and materials supplied nor for any works carried out which arise from fair wear and tear, wilful damage, negligence of the Customer, damage caused by any third party, failure to follow Man and Machine's instructions (whether oral or in writing) or any instructions of the manufacturer or supplier of the Products or alterations made or actions taken without Man and Machine's approval, or damage caused as a result of working on the Products and in any event the Customer should ensure that any work carried out on or with the Products is carried out by individuals or professionals with appropriate skills, qualifications and experience.
- 14.4 In no event shall Man and Machine be liable to the Customer for any damages resulting from loss of data or use, corruption of data, loss of profits or business or any indirect or consequential loss or damage.
- 14.5 Subject as expressly provided in these terms and conditions and except where the Products and Services are supplied 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.
- 14.6 Man and Machine's liability to the Customer in respect of breach of contract or breach of duty or fault or negligence or otherwise whatsoever arising out of or in connection with these terms and conditions will be limited to taking reasonable steps to correct any such breach at Man and Machine's expense and provided that the amount of its liability shall be limited in any event to a total of the value of the fees paid by the Customer to Man and Machine pursuant to this Agreement to include interest and costs save that this provision shall have no application to any liability in respect of death or personal injury or any other liability for which exclusion or restriction is prohibited by law
- 14.7 Man and Machine shall not be liable for the failure of the operation of its website or any connected or linked website and shall not be liable (including any liability for negligence) for the acts or omissions of telecommunications service providers or for failures of, or faults in their networks and equipment or any other failure of fault connected therewith.

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### 15 Indemnity

- 15.1 The Customer will indemnify Man and Machine against any damages, losses, costs, claims or expenses, or any other sums incurred by Man and Machine in respect of any loss Man and Machine suffers directly or indirectly, or any claim brought against it by any third party in relation to:
- 15.1.1 Any loss, injury or damage wholly or partly caused by the Products or their use;
  - 15.1.2 The Customer's breach of any of its obligations under this Agreement;
  - 15.1.3 Any loss, injury or damage in any way connected with the performance of these terms and conditions;
  - 15.1.4 Any costs, claims or expenses of any third party involved in recovering outstanding monies due from the Customer to Man and Machine

Provided that this clause will not require the Customer to indemnify Man and Machine against any liability for the negligence of Man and Machine.

### 16 Force Majeure

- 16.1 Neither party shall be liable to the other for any delay or failure to perform its obligations under this Agreement (other than a payment of money) where such delay or failure results from force majeure, act of God, fire, explosion, and accident, industrial dispute or any cause beyond its reasonable control.

### 17 Communications

- 17.1 Orders will be accepted in writing, which may include fax or email, but notices sent or served must be in writing. Documents or notices must be delivered or sent to Man and Machine's registered office or to any other address notified in the normal course of trading in writing by either party to the other for the purpose of receiving documents or notices after the date of this Agreement.

### 18 Termination

Either party may terminate this Agreement forthwith by notice in writing to the other if:

- 18.1 the other party commits a material breach of this Agreement and, in the case of a breach capable of being remedied, fails to remedy it within 30 calendar days of being given written notice from the other party to do so;
- 18.2 the other party commits a material breach of this Agreement which cannot be remedied under any circumstances;
- 18.3 the other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect;
- 18.4 the other party ceases to carry on its business or substantially the whole of its business; or
- 18.5 the other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.

### 19 Contract in General

- 19.1 The headings in this Agreement are for ease of reference only and shall not affect its interpretation or construction.
- 19.2 The Customer agrees not to assign any of its rights under this Agreement without the prior written consent of Man and Machine.
- 19.3 No delay by either party in enforcing its respective rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or any later breach.
- 19.4 A finding by a court or other competent tribunal that any of these terms and conditions or any part of them is illegal or non-enforceable for any reason will not affect the remainder of them.
- 19.5 These terms and conditions shall be construed in accordance with English law, and any disputes arising shall be submitted to the jurisdiction of the English courts.

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- 19.6 This agreement may only be amended in writing signed by duly authorised representatives of Man and Machine and the Customer.
- 19.7 This agreement contains the whole agreement between the parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them, aside from any specific Extensions otherwise agreed and specified in the Service Specification. The parties confirm that they have not entered into this agreement on the basis of any representation that is not expressly incorporated into this agreement. Nothing in this agreement excludes liability for fraud.