

TERMS AND CONDITIONS of TRADE (GEMSTONE COMPUTERS LTD)

1. INTERPRETATION

In these Conditions:-

"Authorised Representative" means employees of Gemstone Computers Ltd who have been authorised by the board of Gemstone Computers Ltd and who are acting expressly in that capacity and whose names will be provided on request;

" Gemstone Computers Ltd is registered in England under number 5395219. Our full contact details are Gemstone House 21 Hemsby Road Chessington Surrey KT9 2DY;

"Gemstone Procedures" means the procedures of Gemstone Computers Ltd relating to sales and after sales service for the time being in force (details of which are available at upon request) and which form part of these terms;

"Conditions" means the standard terms and conditions of sale, licence and supply set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in Writing between you and an Authorised Representative;

"Contract" means the sale and purchase of Product;

"End User" means any person or body to whom you supply Product;

"Order Confirmation" means the Written confirmation sent by Gemstone Computers Ltd to you to confirm acceptance of your order;

"OTS" means Gemstone Computers Ltd online transaction services;

"Product" means the computer equipment or other goods, installation, training, maintenance, consultancy or third party software which Gemstone Computers Ltd is to supply in accordance with these Conditions;

"Special Order" means an order which, because of the nature of the Product involved, is non cancellable; this will be indicated to when you place your order and if you proceed with the order you will be deemed to have accepted such Special Order status;

"Writing" "Written" includes facsimile or electronic transmission (including e-mail) and comparable means of communication;

"You/Your" means the buyer of Product as stated in the Order Confirmation.

The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. ONLINE BUSINESS

2.1 Access to OTS is entirely at Gemstone Computers Ltd discretion (which may be withdrawn at any time without Gemstone Computers Ltd incurring any liability to you) and restricted to those of your employees whom you have notified to us as having your authority to use OTS using the appropriate form supplied to you. Authorised user security passwords must not be disclosed to any third party. Each authorised user must be given adequate training to enable competent access to OTS.

2.2 You must immediately inform Gemstone Computers Ltd when you become aware that there has been (a) unauthorised use of OTS (b) disclosure of any password or (c) it is no longer appropriate for any individual to access OTS.

3. THE CONTRACT

3.1 Gemstone Computers Ltd shall sell and you shall purchase Product in accordance with any order you give which is accepted by Gemstone Computers Ltd, subject to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions (including your own) even if you have contracted or purported to transact on your terms. Subject to clause 3.4 below, the Order Confirmation will be conclusive evidence of the terms of the Contract.

3.2 No variation to these Conditions shall be binding unless agreed in Writing and signed by two Authorised Representatives.

3.3 Save in the case of fraud, Gemstone Computers Ltd shall not be liable for any advice or representation provided to you before a contract is made unless the advice is in Writing and signed by an Authorised Representative.

3.4 Where there is an error in information provided by Gemstone Computers Ltd we can correct it without any liability on our part and we retain the right to cancel an order in this event.

3.5 The supply of Product may be subject to external controls e.g. export controls. It is your responsibility to obtain any necessary consents although Gemstone Computers Ltd I will co-operate in this, provided you meet any expense.

3.6 You shall comply, and shall make sure that any End User shall comply with the terms of any licensed third party software.

4. ORDERS AND SPECIFICATIONS

4.1 You may place an order by telephone, in Writing or using OTS. An order shall be deemed to be accepted by Gemstone Computers Ltd on the earlier of Gemstone Computers Ltd despatch of an Order Confirmation to you or by Gemstone Computers Ltd commencing fulfilment of the order. All communication, including e-mail, is recorded and archived.

4.2 Gemstone Computers Ltd may change the specification of Product where there is no material adverse effect on quality or performance or to comply with applicable safety or other statutory requirement.

4.3 You are responsible for ensuring that no infringement of a third party's intellectual property rights will result if Gemstone Computers Ltd processes Product in accordance with specifications/instructions given by you.

4.4 If you want to cancel an order (other than a Special Order) you must notify Gemstone Computers Ltd in Writing. If the notification is received by Gemstone Computers Ltd less than 12 hours before shipment a cancellation penalty may be imposed. This will be calculated as 10% of the order value plus the full shipping cost of the order.

4.5 All information Gemstone Computers Ltd provides on Product is based on information from the manufacturer. This is liable to change without notice. Accordingly, Product will be supplied with the specifications and information current at the time of supply. Any compliance information is passed by Gemstone Computers Ltd from the manufacturer without liability.

5. PRICE

5.1 Subject to Condition 5.2 the price of Product shall be Gemstone Computers Ltd's quoted price (whether provided orally or in Writing or is the price specified via OTS at the time of the accepting of the order by Gemstone Computers Ltd). All prices quoted are valid on the day of publication and are subject to change and availability of Product, unless otherwise specified in Writing.

5.2 Gemstone Computers Ltd reserves the right, by giving notice to you at any time before delivery to increase the price of Product to reflect (a) any increase in the cost to Gemstone Computers Ltd which is beyond our control (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties or taxes, significant increase in the costs of labour, materials or other costs of manufacture) or (b) any change in delivery dates or (c) any change to the quantities or specifications for Product which you requested or (d) any delay caused by you. You will then have the right to cancel the order (other than a Special Order) under condition 4.4 provided that cancellation takes place within 24 hours of notification of the price increase.

5.3 Except as otherwise agreed in Writing where Gemstone Computers Ltd agrees to arrange delivery of the Product we will charge you for that delivery. Full details are available on request.

6.4 The price is exclusive of any applicable value added tax, which you shall be additionally liable to pay to Gemstone Computers Ltd .

6. TERMS OF PAYMENT

6.1 Subject to any agreement in Writing, Gemstone Computers Ltd shall be entitled to invoice you for the price of Product on the earlier of delivery or notification to you that Product is available for collection/delivery.

6.2 You shall pay the price of Product (in the currency denoted in the invoice) within 30 days of the invoice date (unless a shorter time is agreed in Writing) even if property in Product has not passed to you. Time for payment shall be of the essence. Receipts for payment will not be given unless requested. Gemstone Computers Ltd may at any time demand that you shall make immediate early payment of the invoice if we certify that we have reasonable grounds to doubt your continued creditworthiness.

6.3 Payment will only be effective once Gemstone Computers Ltd's bank account is irrevocably credited with the amount due.

6.4 If you or any company in your group (if appropriate) fail to pay on time or breach any other provision of this or any other contract with Gemstone Computers Ltd or if there is default under Condition 12.2, then you shall be deemed to have repudiated each contract and we shall be entitled to exercise our rights under Conditions 8.4 and/or 12.1 and appropriate any payments made by you against any outstanding invoices as we may think fit (notwithstanding any purported appropriation by you). Statutory interest (and costs incurred in collecting debts) will be charged on overdue invoices as provided by statute under the Late Payment of Commercial Debts (Interest) Act 1998, or subsequent legislation. Such interest shall be charged from the date the invoice was due for payment until payment (both before and after any judgement, unless ordered otherwise). Interest will be compounded on the first day of each calendar month.

6.5 You have no rights to withhold payment by reason of any alleged breach of warranty or other obligation of Gemstone Computers Ltd. In such circumstances your sole remedy is the provisions set out in Condition 10. You also have no right to set off payments due.

7. DELIVERY AND ACCEPTANCE

7.1 All Products, unless otherwise agreed in Writing, shall be delivered ex works from Gemstone Computers Ltd's shipping point.

7.2 Any dates quoted for delivery of Product are approximate only and Gemstone Computers Ltd shall not be liable for any delays howsoever caused. Subject to 7.3 and unless agreed otherwise in Writing, time for delivery shall not be of the essence. Product may be delivered by Gemstone Computers Ltd in advance of the quoted delivery date upon giving reasonable notice to you.

7.3 Product may be delivered in instalments in which case each delivery shall constitute a separate contract and any rights which you may obtain in respect of one contract shall not apply to any other contract.

7.4 Any discrepancy in shipment quantity or damage must be notified to Gemstone Computers Ltd within 48 hours of receipt of Product. You shall be deemed to have accepted Product unless Written notice of rejection is received by Gemstone Computers Ltd within 5 working days of delivery. You waive any right to revoke acceptance thereafter.

8. RISK AND PROPERTY

8.1 Risk shall pass to you at the time Product is delivered by Gemstone Computers Ltd in accordance with clause 7.1 above. Gemstone Computers Ltd does not accept any liability for loss or damage caused by a carrier. Once Product is your responsibility you must keep it fully insured until you own it and you shall, on demand, produce evidence of this insurance to Gemstone Computers Ltd. Until the full price for Product has been paid you shall hold the policy and proceeds of insurance to the extent of the unpaid price on trust for us.

8.2 The ownership of Products shall not pass to you until we have received in cash or in cleared funds payment in full of the price of Product or any other products sold or agreed to be sold to you (or any group company of which you are part). You have no right to pledge, charge, encumber or otherwise dispose of Product or any interest therein or purport to do so until you own it.

8.3 Until such time as you own Product, you shall hold it on behalf of Gemstone Computers Ltd and shall retain possession of it in good order and condition, properly stored and protected and identified as Gemstone Computers Ltd property and shall (in the absence of proof to the contrary) be deemed to deal with it and other like product supplied by Gemstone Computers Ltd on a 'first in first out basis'.

8.4 If there is an event of default under Condition 12.1, then Gemstone Computers Ltd may write to you revoking our consent for you to retain possession of, and any express or implied authority to sell, use or consume, any Product which you do not own. We can require you to deliver Product up to us (and you shall forthwith do so, failing which we may repossess, and in order to do so may enter your premises or that of any third party where Product is or is thought to be without liability for any resulting damage, and against the consequences of which you shall indemnify Gemstone Computers Ltd) and re-sell Product.

8.5 No title shall pass in any third party software supplied to you.

9. RETURNS

9.1 Return of Product by you must be in compliance with Gemstone Computers Ltd Procedures and if you fail to comply Gemstone Computers Ltd reserves the right to levy an administration charge (equal to 10% of the Product price subject to a minimum of £20). Failure to comply with the Gemstone Computers Ltd Procedures may also invalidate any warranty and in certain cases may result in Product being destroyed for which you will still be liable to pay.

9.2 No returns will be accepted without a Returns Materials Authorisation ('RMA') number which may be issued by Gemstone Computers Ltd at its sole discretion. Returns must be in original manufacturer's shipping cartons complete with all packing materials. All Products for return shall be returned freight prepaid by you in the manner specified in the RMA. Product not eligible for return will be returned to you freight collect.

10. WARRANTIES AND LIABILITY

10.1 In the case of defective Product, Gemstone Computers Ltd shall pass on to you the benefit of any warranty supplied to it by the manufacturer so far as we are able to and provided that you comply with Condition 9. Details of the warranty will be supplied to you upon sale via the Gemstone Computers Ltd Procedures but any failure to do this will not invalidate this warranty. Further Gemstone Computers Ltd warrants that any services provided to you (or to an End User at your direction) in connection with Product will be provided using reasonable skill and care and, as far as possible, in accordance with the Order Confirmation. The above warranty excludes all other warranties and/or representations relating to the Product and/or the associated services.

10.2 Gemstone Computers Ltd shall be under no liability (a) in respect of any defect in any Product supplied arising from any drawing, design, End User requirement or specification supplied by you or End User (b) for any loss of, damage to or disclosure of data either contained in Product returned to Gemstone Computers Ltd or arising from the supply of services by Gemstone Computers Ltd (and it is your responsibility to take all adequate back-up and confidentiality precautions) (c) in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions or failure to follow Gemstone Computers Ltd or the manufacturer's instructions (d) if the total price for Product has not been paid by the due date for payment.

10.3 Where Gemstone Computers Ltd is providing Product by way of consultancy, configuration or other services to you or an End User you are solely responsible for determining your or the End User's requirements and ensuring that the Product is satisfactory for the purpose for which it is required and has overall sufficient functionality and compatibility. Where you fail to do this any assessment made by Gemstone Computers Ltd shall be accepted as binding as between you and Gemstone Computers Ltd.

10.4 You shall ensure that (a) warranty claims are validly made (b) no Product returned to Gemstone Computers Ltd contains any viruses or defects (c) all warning labels and instructions applicable to Product are not tampered with and/or removed before such Product is sold on or otherwise transferred and (d) all serial numbers of Product are recorded and that proper records are kept to enable Product to be traced to any third party and allow Gemstone Computers Ltd reasonable access to those records.

10.5 Save in the case of death or personal injury due to Gemstone Computers Ltd negligence, the extent of Gemstone Computers Ltd's liability to you for being in breach of contract or tort shall be limited to the amount paid to and retained by Gemstone Computers Ltd under the Contract and Gemstone Computers Ltd shall not be liable to you for any indirect, consequential or economic loss or damage (whether for loss of profit or otherwise), which arises out of or in connection with the supply of Product or the use or resale by you of Product, except as expressly provided in these Conditions.

10.6 Without limiting the generality of the foregoing, in submitting each order you shall be deemed to represent and warrant that you are in the business of dealing in, or manufacturing, assembling or configuring computer hardware, software or related products and that you have sufficient expertise and qualifications to form your own assessment of the qualities and characteristics of Product (including without limitation their merchantability, fitness for required purpose, compatibility with other products, compliance with standards and networkability, as appropriate) and advising on the fitness of purpose of any services or project activities provided.

10.7 Gemstone Computers Ltd is entitled to treat as conclusive any representation from a person who is or appears to be your employee, representative or agent and, in Gemstone Computers Ltd 's reasonable opinion, has the requisite authority. This includes, but is not limited to, the placing of orders using OTS.

11. INDEMNITY

11.1 In the event that a Product infringes any patent or copyright of a third party Gemstone Computers Ltd shall indemnify you against such claim, provided that (a) you promptly give notice to us of any claim alleging such infringement (b) you allow us to control the defence and settlement of such claim, and (c) you fully cooperate with us in connection with the defence and settlement of such claim. If you are requested to stop selling any infringing Product or if we believe that any Product is likely to be the subject of a claim of infringement, we shall, at our option and at expense (a) procure the right for you to continue distributing Product (b) replace or modify Product so that it becomes non-infringing provided that any such replaced or modified Product meets the specification of Product that is modified or replaced or (c) may require that you return the infringing Product for full credit of the price you paid. We shall have no obligation of indemnification or any liability if the infringement is based upon: (a) any alteration, change or modification to Product not effected by us (b) Product in combination with anything not provided by us (c) any process in which Product is used in a manner not contemplated by Product's documentation. Gemstone Computers Ltd shall have no other obligation or liability in the event of infringement or other violation of any third party's intellectual property rights.

11.2 Should breach by you of these conditions cause Gemstone Computers Ltd any loss or damage then you shall fully indemnify Gemstone Computers Ltd against the same. It is agreed that such breaches shall include those of clauses 2, 3.6, 4.3, 9, 10.4 and 13.

12. EVENTS OF DEFAULT

12.1 If an event of default occurs Gemstone Computers Ltd can, without prejudice to any other right or remedy available to it, send notice to you in Writing to (a) terminate or cancel the contract and to cancel the licence to use any third party software (b) suspend any further deliveries or provision of Product (c) suspend any warranty or other support for any Product supplied by Gemstone Computers Ltd (d) demand that any sums owed by you are immediately due and payable (e) set off any amounts on any account whatsoever; and (f) exercise our rights under Condition 8.4.

12.2 An event of default will take place if (a) you make any voluntary arrangements with your creditors or become subject to an administration order or (being an individual or firm) become bankrupt or (being a company or partnership) go into any form of liquidation, winding up, dissolution or insolvency procedure (otherwise than for the purposes of amalgamation or reconstruction) or anything analogous to the foregoing occurs in relation to you in any jurisdiction (b) someone takes control of all or part of your assets (c) you cease, or threaten to cease, to carry on business (d) Gemstone Computers Ltd reasonably apprehends that any of the events mentioned above is about to occur and notifies you accordingly or (e) Gemstone Computers Ltd becomes entitled to exercise any of our rights under Condition 6.4.

13. CONFIDENTIAL INFORMATION

13.1 All information which comes to the knowledge of either of us concerning the other's respective operations including, but not limited to, price specific information supplied by Gemstone Computers Ltd to you, shall be treated as confidential. It must not be disclosed to any third party without the prior consent in Writing of the party to whom the information relates unless the information was (a) known beforehand (b) becomes publicly available through no breach of confidentiality, or, (c) is received in good faith from a third party who has no obligations of confidence in respect of such information.

13.2 Notwithstanding 13.1, we may make such enquiries and obtain references from or provide information about you to any trade supplier or credit reference agency.

14. GENERAL

14.1 Any notice required or permitted to be given under these Conditions shall be in Writing addressed to the receiving party at its registered office or principal place of business. Any signature given by way of electronic signature shall be deemed by the receiving party to have been given by the signatory at the time represented and to be binding upon that party.

14.2 Neither of us will be liable to the other for any delay or failure under the contract (apart from your failure to pay) if the delay or failure was due to force majeure or any cause beyond reasonable control.

14.3 If Gemstone Computers Ltd waives your breach of any provision of any contract that will not be treated as a waiver of any other or subsequent breach of the same or any other provision of that or any other contract. Gemstone Computers Ltd's rights under these Conditions are in addition to any other rights which Gemstone Computers Ltd may have under the general law or otherwise. If 'you' comprises two or more persons, your obligations are joint and several.

14.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

14.5 None of these terms are enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person/party who is not a party to the Contract.

14.6 These Conditions and all contracts shall be governed by and construed in accordance with English law SAVE THAT in the case of Product to be delivered by us or you to premises in Scotland, these conditions shall be governed by Scottish law.

14.7 Any special terms for Product to be sent outside the United Kingdom shall be specified in the Order Confirmation.

14.8 For training and evidential purposes, Gemstone Computers Ltd may monitor and record telephone conversations with you with or without the use of warning tones or other warnings.

31st March 2005