

Desktop Publishing Microsystems Ltd

Terms & Conditions



1 DEFINITIONS

The following definitions will apply: "Company" means The Desktop Publishing Group whose registered office is at DTP House Bowcliffe Road, Leeds, LS10 1HB. "Conditions" means the terms and conditions set out below. "Confidential Information" means information relating to the business affairs and methods of working of either party, the details financial terms of the Contract, and any other information of a secret or proprietary nature. "Price" means the price for the Products and/or services including carriage, packing, insurance and VAT (if applicable). "Products" means the party directly contracting or seeking to contract for the Products and/or Services. "Services" means all services supplied by the Company. Any reference in these Conditions to any provision of a Statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

2 CONDITIONS APPLICABLE

2.1 The Company's quotations are not binding on the Company and a contract ("the Contract") will only come into being upon acceptance by the Company of an Order placed by the Purchaser. Acceptance by the Company shall be either by written notice of acceptance or by delivery of the goods. Notwithstanding that a Contract has come into being the Company will be entitled to increase the price if and to the extent that the price of products or services supplied to the company by third parties which are necessary to fulfil the contract increase.

2.2 The Contract will be subject to the Conditions which shall apply to all contracts for the supply of Products and/or Services by the Company to the exclusion of all other terms and conditions including any terms and conditions which the Purchaser may purport to apply under any purchase order, confirmation of order or similar document.

2.3 Any variation to the Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Company and in particular (but with limitation); where the Purchaser requires the Products and/or Services for a particular purpose the Company shall be deemed to have no notice of such purpose unless that purpose is agreed by the Purchaser and Company in writing; and the Company and the Purchaser acknowledge that there is no usage of course of trading in existence which could affect the terms of Contract in any way

3 PAYMENT

3.1 The Price shall be payable in pounds sterling and payment is due within thirty days of the invoice

3.2 Interest on overdue monies shall accrue from the date when payment becomes due from day to day until the date of payment at the rate prescribed in the Statutory Instruments linked to the Late Payment of Commercial Debts (Interest) Act 1998 and shall accrue at such rate after as well as before any judgement.

3.3 The Company reserves the right, by giving notice to the Purchaser at any time before delivery, to increase the Price or alter the specification to reflect any increase in the cost to the Company or unavailability of Products which is due to any factor beyond the control of the Company (including without limitation increases in costs or labour or materials), and any change in delivery dates, quantities or specifications for the Products and/or Services requested by the Purchaser or failure of the Purchaser to give the Company adequate information or instruction

4 DELIVERY

4.1 The Company will make reasonable efforts to deliver the Products and/or perform the Services in accordance with any time limit outlined in any quotation provided. Where no time limits have been specified then the Company will perform the Services within 60 days of acceptance of the order by the Company. Provided that the Company meets the time limits set out in this clause no delay in delivery shall entitle the Purchaser to repudiate or cancel the Contract.

4.2 The Products and/or Services may be supplied in separate instalments and each separate instalment may be invoiced and if invoice must be paid for in accordance with the provisions of the Contract. The failure of the Purchaser to pay for any one or more of the said instalments on the due date shall entitle the Company (as its sole option) without notice to suspend further performance of the Contract pending payment and/or treat the Contract as repudiated by the Purchaser.

5 REJECTION

5.1 Without prejudice to clause 4 of the Conditions the Purchaser shall inspect the Products and/or Services supplied under this Contract immediately on delivery and shall in the case of any allegation of non-conformity or unfitness of the Products and/or Services within 7 days from delivery give notice in writing to the Company of any matter or thing or reason by which it alleges the Products and/or Services are not in accordance with the Contract.

5.2 If the Purchaser fails to give notice as provided in clause 5.1 the Purchaser shall be deemed to have accepted the Products and/or Services and they shall be deemed to be in all respects in accordance with the Contract and fit for their purpose.

5.3 If the Purchaser purports to reject the services by giving notice under Clause 5.1 and such rejection afterwards becomes ineffective by reason of the Purchaser dealing with the Products and/or Services as owner by reason of any other conduct on the part of the Purchaser inconsistent with such rejection, the Purchaser shall be bound to pay the Price in full and shall have no claim for damages or compensation by reason of any non-conformity of the Products and/or Services with the Contract.

5.4 If the Purchaser gives notice under clause 5.1 the Company may elect to provide other Products and/or Services which comply with the Contract within 14 days of the date of the notice and (provided those Products and/or Services are not subject to a further notice under clause 5.1), the Company shall be deemed to have complied with its obligations under the Contract.

6 LICENCE

The Company does not licence any Products to the Purchaser. Any software delivered by the Company is subject to any licence agreement in place with the supplier of that software and the Purchaser warrants and represents that he has agreed to be bound by such terms as are thereby imposed. Where the Purchaser requires a copy of such terms prior to entering into the Contract, then the Purchaser should make such request to the Company in writing beforehand.

7 RETENTION OF TITLE

7.1 Notwithstanding delivery and the passing of risk in any and all Products, or any other provision of the Conditions, and property in the Products shall not pass to the Purchaser until the Company has received in cash or cleared funds payment in full of the price and of the price of all other goods agreed to be sold by the Company to the Purchaser for which payment is then due.

7.2 Until such time as the property in the Products passes to the Purchaser, the Purchaser shall hold the Products as the Company's fiduciary agent and bailee and shall keep the Products separate from those of the Purchaser and third parties and properly stored, protected and insured and identified as the Company's property. Until such time as the property in the Products passes to the Purchaser the Company shall be entitled at any time to require the Purchaser to deliver up the Products to the Company and if the Purchaser fails to do so forthwith to enter upon any premises of the Purchaser or any third party where the Products are stored and repossess the Products.

7.3 Notwithstanding the Conditions shall prohibit the Company's right to issue proceedings to recover the Price, even where title to the Products has not yet passed.

7.4 The Purchaser shall not be entitled to pledge or in any way charge by way of security for any indebtedness (save for a commercial floating charge entered into at arm's length in the Purchaser's ordinary course of business) any of the Products which remain the property of the Company shall (without prejudice to any other right or remedy of Company) forthwith become due and payable

8 CONFIDENTIALITY AND DATA

8.1 Each party will hold the other's Confidential Information in confidence at all times, will only use such information for the purposes of performing its obligations under the Contract and will not disclose, divulge or release the same to any person except to those of its employees, agents, advisors and sub-contractors as the Contract reasonably requires.

8.2 Confidential Information does not include; information generally available to the public, information obtained or developed independently by either party without reference to the Confidential Information, or information legitimately obtained from third parties.

8.3 Each party will ensure that those of its employees, agents, advisors and sub-contractors who are involved in the Contract are made aware of the confidential nature of the Confidential Information and are under obligations of confidentiality similar to the obligations of this clause.

8.4 The obligations of confidentiality give in this clause shall survive after the termination of the Contract, howsoever terminated, for a period of five years.

8.5 It shall not be a breach of this clause to disclose Confidential Information which it is legally obliged to disclose provided that the legal obligation in question has not been brought about because of a wrongful act or omission of the party from whom the disclosure is demanded and that such a part, where permitted by law, informs the other party prior to disclosure.

9 LIABILITY

9.1 Subject to clause 9.3, the Company's entire liability to the Purchaser whether in contract, tort or otherwise flowing from any one event or series of connected events shall not exceed the Price.

9.2 The Company shall not be liable to the Purchaser for any loss of profit, loss of goodwill, loss of business or any consequential and the Purchaser is solely responsible for obtaining its own insurance against such losses.

9.3 Nothing in this clause or elsewhere in the Conditions will exclude or limit any liability either party may have to other under any indemnities in the Conditions, for fraudulent misrepresentation, breach of any terms as to title and quiet possession implied by statute or at common law, or death or personal injury arising from the Company's negligence (as such terms are used in the Unfair Contract Terms Act 1977).

9.4 The Company shall not be liable for the performance, quality or fitness for purpose of software or hardware supplied, or for any maintenance provided, to the Company or the Purchaser by third parties save to the extent of any warranties given to the Company by, in the case of hardware, the Company's supplier, in the case of the software, the Company's immediate licensor, or in the case of maintenance, the maintainer.

9.5 This clause shall, unless expressly stated otherwise, prevail over any provision of the Conditions.

10 LOSS OR DAMAGE

10.1 From the time of receipt by the Purchaser until such time as payment shall be made for the Products, the Products shall be at the risk of the Purchaser and any loss of or damage to or deterioration of the Products from any cause whatsoever other than negligence of the Company shall be the responsibility of and be borne by the Purchaser.

10.2 In the event of negligence by the Company the liability of the Company for such loss or damage mentioned in clause 10 above shall be limited to the invoice value of the Products and/or Services.

11 BREACH

Upon breach of the Conditions by the Purchaser the Company reserves the right to withhold Products and/or Services from the Purchaser and may invalidate any agreements for future supply, notwithstanding any contracts entered into by the Purchaser with a third party.

12 NON-SOLICITATION

12.1 Whilst the Contract is ongoing and for six months after its termination, each party agrees that it will not, without the other's consent, offer employment to any person employed by the other in a senior or technical capacity at any time in the preceding six months, unless the offer of employment can be demonstrated to have resulted from a response by the employee to a public advertisement or a direct and unsolicited approach by the employee.

12.2 The parties pre-estimate that the loss that would be caused by a breach of this clause can be expressed as an amount equal to 45% of that employee's gross annual salary immediately prior to his departure. This estimate is comprised of an estimate of an amount equivalent to 20% of gross annual salary in respect of the average recruitment cost of the Company's employees and 25% of the gross annual salary being the estimated average induction cost of new employees. It is agreed that the amount comprises liquidated damages and the parties agree that such amount is reasonable and payable to the other party on demand in the event of breach of this clause.

13 TERMINATION

13.1 If the Purchaser makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being a firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation, or reconstruction), or an encumbrancer takes possession of, or a receiver is appointed to, any of the property or assets of the Purchaser, or the Purchaser ceases, or threatens to cease, to carry on business, or the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Purchaser and notifies the Purchaser accordingly then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to determine the Contract or suspend any further provision of Products and/or Services under the Contract without any liability to the Company, and if the Products and/or Services have been provided but not paid for the Price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

14 GENERAL

14.1 All headings are for ease of reference only and shall not affect the construction of this Contract.

14.2 Any provision of this Contract which is or may be void or unenforceable shall to the extent of such invalidity or unenforceability be deemed severable, separate and distinct and shall not affect any other provision of this Contract.

14.3 Any indulgence by the Company to the Purchaser or any waiver by the Company of its rights, either under the Conditions or otherwise, in respect of a transaction or series of transactions shall not be deemed to be a waiver of the Company's rights in respect of any further transactions nor to be an agreement to confer the same indulgence in respect of any subsequent transactions.

14.4 The Company shall not be liable for any circumstance due to any event beyond the reasonable control of the Company including but not limited to acts or omissions of third parties, act of God, war, strike, lock-out, industrial action, fire, flood, drought or tempest.

14.5 The Contract shall be deemed to be made at the Company's registered office and shall be governed by English Law and all disputes arising out of this Contract shall be subject to the exclusive jurisdiction of the courts of England and Wales.

14.6 Any notice under this Contract shall be effective if sent by first class post to the registered office of the Purchaser or Company (effective on the second day after posting) or by fax, or e-mail to the last known fax number or e-mail address of the Purchaser or Company (effective 24 hours after being sent)

14.7 The Purchaser acknowledges the fact that it has had the opportunity to read these Conditions prior to ordering from the Company and in proceeding warrants its belief that the Contract is reasonable in all of its terms.