

# Wick Hill Ltd Terms & Conditions

## CONDITIONS OF SALE AND SUPPLY OF GOODS

### 1. Definitions

"the Customer" means the party so defined on the quotation forming part of the Contract.

"Wick Hill" means Wick Hill Limited or Wick Hill Group plc..

"Contract" means any quotation signed by an authorised signatory of Wick Hill agreed with the Customer or any order signed by an authorised signatory of the Customer.

"Goods" means any Hardware, Equipment, Software and Documentation.

"Services" means such services as set out in the Contract made between Wick Hill and the Customer.

"Software" means any operating system application software and other software listed on the quotation/order forming part of a Contract and other software supplied by Wick Hill to the Customer in the performance of its obligations under such Contract.

"Documentation" means any operator manual and all other documentation relating to the Software supplied at any time by Wick Hill to the Customer in connection with the Software supplied by Wick Hill to the Customer.

"the Premises" means the address of the Customer as shown on the quotation/order forming part of a Contract or other premises of the Customer agreed with Wick Hill

"the Price" means the aggregate price for any Goods and Services as shown on the quotation/order forming part of a Contract.

### 2. Quotations and Contracts

2.1. Quotations are open to acceptance by the Customer for thirty days.

2.2. The terms of any Contract for the supply of Goods and/or Services to the Customer shall consist of the express terms of any quotation/order (including these Conditions of Sale and Supply of Goods and Services) together with the terms of any other document expressly referred to in any such quotation/order.

2.3. Any such Contract shall supersede all previous discussions negotiations letters and agreements in relation to the supply of such Goods and/or Services.

2.4. If the Customer accepts any Goods delivered or Services supplied by Wick Hill before a binding agreement is in existence then the Customer's acceptance of such Goods/Services shall be deemed to constitute acceptance of the terms of the quotation and of the terms of any invoice rendered by Wick Hill.

### 3. The Price, Payment and Delivery Charges

3.1. The Price shall be the Price specified in the Contract. VAT or other taxes and charges will be billed additionally.

3.2. Delivery charges are in respect of the transport and related cost of delivery of Goods to the Premises.

3.3. Payment of the Price and VAT shall be due within 30 days of the date of the invoice.

3.4. Wick Hill reserves the right to charge interest on overdue Invoices from the date when payment becomes due on a daily basis until the date of payment at a rate of 4% above Royal Bank of Scotland base rate in force at the time when payment is due.

### 4. Delivery and Part Delivery

4.1. Any date for delivery of Goods or provision of Services specified in any Contract or otherwise quoted or agreed to by Wick Hill will be estimated by Wick Hill as accurately as possible. Wick Hill's sole obligation thereafter shall be to deliver the Goods or provide such Services within a reasonable period.

4.2. Any claims for loss damage or incorrect delivery of Goods must be made to Wick Hill in writing within five working day of delivery/collection by the Customer supplying full details. Any claims for non-delivery must be made in writing within five days of the invoice date.

4.3. Unless a written notice is received by Wick Hill pursuant to sub-clause 4.2 the Customer shall be deemed to have accepted the Goods in accordance with the delivery note/invoice.

4.4. Delivery shall be made during Wick Hill's or the Customer's normal working hours to the Premises specified.

### 5. Passing of Risk and Title

5.1. Risk in any Goods passes to the Customer when Wick Hill delivers such Goods to any entrance to the Premises or when the Goods are collected by the Customer.

5.2. The Customer shall indemnify Wick Hill against any damage to or loss of any Goods from the time of collection by the Customer or delivery of such Goods to any entrance to the Premises until the receipt by Wick Hill of the price.

5.3. Title in any Goods supplied by Wick Hill to the Customer under the terms of this Contract shall remain the sole and absolute property of Wick Hill both in law and in equity until the Customer shall have paid the Price to Wick Hill. Pending payment by the Customer, the Customer acknowledges that it is in possession of the Goods solely as a bailee.

5.4. Until such time as the Customer becomes the owner of the Goods it will keep them in such a manner that they are readily identifiable as belonging to Wick Hill.

### 6. Intellectual Property Rights

6.1. This clause states Wick Hill's entire liability to the Customer arising from patent copyright or intellectual property right infringement and is subject to the Customer accepting the terms of any Software Licence Agreement.

6.2. Wick Hill warrants to the Customer:-

6.2.1. That Wick Hill either is the beneficial owner of any letters patent or copyright in the Goods or has the written permission of the owners of the letters patent or copyright for their use by Wick Hill and the Customer.

6.2.2. That neither the Goods nor their use shall infringe or violate any rights of any other party.

6.3. Subject to the provisions of this condition and to the Customer not being in breach of any other obligation under any Contract Wick Hill shall indemnify the Customer against all costs, expenses, losses and damages occasioned to the Customer in consequence of any breach of these warranties or arising out of any claims alleging breach of these warranties and shall defend any proceedings in the Customer's name provided always that:-

6.3.1. Wick Hill is notified within 21 days in writing of any such claim and is given complete control of any information required for the defence of the same.

6.3.2. The Customer does not prejudice in any manner Wick Hill's ability to defend such claim, and

6.3.3. The alleged infringement or breach does not arise from the Customer's use of any part of any Goods in conjunction with Software obtained from third parties or as a result of any unauthorised modifications made to the Software by the Customer.

6.4. Where an injunction is or could be granted against Wick Hill's use of any Software by reason of infringement of any patent or copyright or intellectual property right, Wick Hill may at its option and expense either:-

6.4.1. Procure for the Customer the right to continue using such Goods or any part thereof or

6.4.2. Replace or modify the same so that there is no infringement or

6.4.3. If neither of options (6.4.1) and (6.4.2) above is possible accept the return of such Goods and

6.4.4. Grant the Customer a credit equal to the value of such Goods taking into account depreciation.

6.5. Copyright and/or any intellectual property right in any Software and/or Documentation supplied by Wick Hill shall remain with Wick Hill or (as the case may be) such third party who has permitted Wick Hill to supply such items hereunder. In no circumstance shall copyright in such items pass or be deemed to pass to the Customer.

6.6. The Customer shall accept and when required sign a Software Licence Agreement in the form required by Wick Hill or the supplier of the Software to Wick Hill.

6.7. No part of any Software may be copied or reproduced or utilised in any form except in accordance with the Software Licence Agreement.

6.8. All information and know-how supplied by Wick Hill under or in connection with the Contract is supplied on a confidential basis and the Customer shall maintain the confidentiality of the same and in particular will not without Wick Hill's prior written consent:-

6.8.1. Disclose any details of any Software or any Equipment or its method of operation to any third party.

6.8.2. Allow any use of the Software and/or the Documentation or any part thereof by any third party.

- 6.8.3. Give or lend to any third party any copy of any program or any other Software in whatever form or any copy of or any part of any operating manual or Documentation supplied by or on behalf of Wick Hill.
- 6.8.4. Attempt or cause the Software or any part of it to be decompiled or re-engineered without Wick Hill's written consent.
- 6.9. The Customer will further take all reasonable steps to ensure that:-
- 6.9.1. No authorised person may take or remove from the Customer's possession any copy of any Software or of the documentation supplied by or on behalf of Wick Hill.
- 6.9.2. Those persons who with the Customer's consent have access to any Goods are aware of the provisions of this clause.
- 7. Substitution and Modification**  
Wick Hill reserves the right to make improvements substitutions and modifications in the specification of the Software provided that such improvements substitutions or modifications will not materially affect its performance.
- 8. Communications Equipment**  
If the Contract includes the supply or use of data communications equipment the Customer will obtain and produce to Wick Hill any agreement required by the supplier of communication services to the Customer ("the Service") in regard to the connection of data communications equipment with apparatus belonging to the Service. The Customer will indemnify Wick Hill against any breach of the Service regulations.
- 9. Warranty**  
Wick Hill's sole warranty in respect of the Software comprised in any Contract is that on its installation it will perform in accordance with the manufacturer's specifications for such Software published at the date of the execution of the Contract.
- 10. Force Majeure**  
Wick Hill shall be relieved from liability under any Contract if and to the extent that it may become unable to carry out all or any of its obligations as a result of any event or matter beyond its reasonable control which occurs after the date of such Contract and which was not reasonably to be foreseen as likely to occur during the anticipated period for the performance of such Contract and/or if and to the extent that the performance of all Wick Hill's obligations becomes materially more expensive or onerous as the result of any such event or matter.
- 11. Liability**
- 11.1. The provisions of this condition reflect the insurance cover which Wick Hill has effected. If the Customer seeks further protection against loss the Customer is advised to effect its own insurance.
- 11.2. Wick Hill shall be liable for death or personal injury relating from Wick Hill's "negligence" as defined in Section 1 of the Unfair Contract Terms Act 1977.
- 11.3. Wick Hill shall be liable up to a maximum of £2,000,000 in the case of any one event or series of events in respect of damage caused by fire or explosion resulting from Wick Hill's negligence as defined in sub-clause 11.2.
- 11.4. Subject always to the provisions of sub-clauses 11.1, 11.2 and 11.3 hereof Wick Hill's liability (whether in contract tort or otherwise) arising out of any failure to perform its obligations contained in the Contract shall not exceed the Price of the Goods.
- 11.5. Wick Hill shall not in any circumstances be liable to the Customer for any loss of profit by the Customer arising out of any failure by Wick Hill to perform its obligations hereunder.
- 11.6. The Customer shall indemnify Wick Hill in respect of:-
- 11.6.1. Direct physical damage to any Wick Hill property on the Customer's premises other than that directly attributable to negligence by Wick Hill or its servants or agents.
- 11.6.2. The Customer's liability for direct physical damage is limited to the invoiced value of any Goods damaged.
- 11.6.3. Direct physical injury to or death of any of Wick Hill's servants or agents resulting from the negligence of the Customer or its agents or servants. Such liability shall be unlimited in amount.
- 12. Waiver**
- 12.1. No failure delay relaxation or indulgence on the part of Wick Hill in exercising any power or right conferred upon it in any Contract shall operate as a waiver of such power or right nor shall any single or partial exercise of any such power or right preclude any other or further exercise thereof or to the exercise of any other power or right.
- 12.2. The Customer shall not assign or purport to assign the benefit of all or any part of any Contract or any interest herein.
- 13. Non-Solicitation**  
The Customer shall not make or seek to make any offer of employment or of consultancy work to any person who is for the time being an employee of Wick Hill or otherwise encourage such person to become their employee or consultant.
- 14. Notices and Termination**
- 14.1. Any notice or request or other communication required to be given or made hereunder by either party under these terms and conditions must be in writing and may be affected by First Class Post or Recorded Delivery and delivered to the company's principal place of business and all notices shall be marked for the attention of the 'Managing Director'. All such notices shall for all purposes be conclusively deemed to have been delivered in the normal course of post unless there shall at the relevant time have been in progress a widespread disruption to the mail services and in proving the fact of dispatch it will be sufficient to show that the envelope containing such notice was properly addressed stamped and posted. Any notice sent by facsimile transmission shall be deemed to have been delivered on the next working day following its dispatch.
- 14.2. Without prejudice to any other provisions of the Contract, the Contract may be terminated:-
- 14.2.1. Forthwith by either party if the other party is in fundamental breach of the Contract and fails to remedy such breach within 14 days.
- 14.2.2. By either party giving three months' notice in writing to the other.
- 14.2.3. Wick Hill will be entitled to terminate any Contract it has with the Customer (without prejudice to any claims which it may have in respect of such Contract) if the Customer is in breach of any other agreement with Wick Hill and has failed to remedy such breach in accordance with the terms of that Contract or if the Customer shall have a receiver appointed or if a petition is presented, an order is made or a resolution is passed for the winding up of the Customer (otherwise than for the purpose of reconstruction and amalgamation) or if the Customer shall convene a meeting of and propose or enter into any agreement with its creditors.
- 15. Miscellaneous**
- 15.1. Wick Hill reserves the right to formally vary these conditions by not less than seven days notice in writing to the Customer. The Customer is entitled to reject any such variation. Such rejection must be in writing and served within seven days of the original notice. If no rejection is received the Customer shall be conclusively deemed for all purposes to have accepted such variation.
- 15.2. In the event of any conflict between these conditions and any Software Licence/Support Agreement entered into between the Customer Wick Hill and/or the supplier/manufacturer of the Software the terms of the Software Support/Software Licence Agreement shall prevail.
- 16. Jurisdiction**
- 16.1. Any Contract shall be governed by and construed in accordance with English Law and the parties agree to submit to the non-exclusive jurisdiction of the English Courts.