

## **Nouveau Solutions Ltd Terms and Conditions 2018**

### **1.0 Definitions**

In these Terms and Conditions

- 1.1 "The Company" shall mean Nouveau Solutions Ltd or any associated company from time to time and by whom an Order is accepted.
- 1.2 "the Buyer" shall mean the person, organisation, firm or company from whom orders are received.
- 1.3 "Products" shall mean the range of computer hardware and software, equipment other product accessories and components supplied by The Company.
- 1.4 "Order" shall mean an order placed with The Company specifying the types and numbers of Products required by the Buyer.
- 1.5 " Price" shall mean the price of the product (as further defined in Clause 3 hereof) together with all VAT and any interest due.

### **2.0 Orders and Acceptances**

2.1 An order shall be accepted only upon and subject to The Company's current Terms and Conditions of Sale which are complete and exhaustive save in respect of software sales where there are additional Conditions applicable and supplied to Buyers. In the event of inconsistency between these Conditions and the additional Software Conditions these Conditions shall prevail.

These Terms and Conditions of Sale shall prevail over any terms or conditions which the Buyer may seek or have sought to impose. Any conditions in the Order will be binding only so far as they are compatible with these Terms and Conditions and are expressly accepted by The Company in writing. The Buyer understands and agrees that all future Orders are subject to The Company current Terms and Conditions of Sale.

2.2 Each Order shall only have been accepted by The Company if written notification has been given by The Company to the Buyer within seven days of receipt of the Order from the Buyer and if not so accepted it shall be deemed to have been refused.

2.3 If at any time the Buyer cancels an Order for Products which are specified as "nonstandard" or which do not appear in The Company's most recent catalogue then The Company shall be entitled to claim as damages an amount equal to 75% of the value of the Order which amount the Buyer agrees represents a genuine pre-estimate of The Company loss. Upon alteration or cancellation of any Order (whether for standard or non-standard Products) The Company shall have the right to realise at its discretion all monies, securities, valuables or goods pledged with or held by it on behalf of the Buyer and to apply the proceeds in or towards the satisfaction of such claim for damages and the Buyer shall have no claim whatsoever against The Company in connection therewith.

2.4 Clerical errors may be corrected by The Company at any time.

### **3.0 Price of Products**

3.1 An Order is accepted only on the condition that the prices of the Products shall be those in force at the date of dispatch of the Products. The Company shall give written notice of any price increase that shall be implemented between the acceptance of an Order and the date of the dispatch of the Products. All prices and other sums payable by virtue of these Terms and Conditions are subject to the addition of Value Added Tax or such other tax required to be paid by law at the rate for the time being in force. For the avoidance of doubt The Company price lists do not constitute an offer.

### **4.0 Product Specification**

4.1 The Buyer shall within seven days of the receipt of the products carry out at own expense tests to ensure that the Products satisfy the Product specification as set out in the operating manual or other literature supplied by The Company with the Products and shall notify to The Company in writing within such 7 day period of any failure of the Products to meet the referenced Product specification. No liability shall attach to The Company until such time as The Company in its absolute discretion is satisfied on examination of the Products that any defect arose solely from faulty materials or workmanship or negligence on the part of The Company and was not the result of any other cause.

### **5. Delivery**

5.1 The Buyer shall at the time of placing the order with The Company specify in writing the date, address and any general instructions for the delivery of the Products.

5.2 The Company shall use reasonable endeavours to supply and deliver the Products in accordance with any such date, address and general instructions specified by the Buyer however time shall not be of the essence. The Company shall not be liable for its inability to deliver Products if prevented from doing so by any cause beyond the reasonable control of The Company.

5.3 The method of packing and delivery shall be at the discretion of The Company. The Buyer shall pay all reasonable delivery charges to The Company.

### **6.0 Risk and Title**

6.1 Upon delivery to the Buyer or any carrier or agent acting for him the Products shall be at the Buyers risk but notwithstanding such delivery the Products shall remain the sole and absolute property of The Company as legal and equitable owner until such time as the Buyer shall have paid The Company the price for the Products or any other Products previously supplied by The Company.

6.2 Until the price has been paid the Buyer shall hold the Products in a fiduciary capacity for The Company and in such capacity shall keep them insured in the name of The Company or such other company within The Company whose name the invoice or invoices are issued to their full reinstatement value with a reputable insurance office and the Buyer will indemnify The Company in respect of any loss not recovered or recoverable under such policy of insurance.

6.3 The title to and in the Products shall remain with The Company notwithstanding that the Products have become incorporated in or affixed to other items, machinery goods or any other thing whatsoever.

6.4 Until the Price has been paid the Buyer shall keep the Products clearly marked as The Company' property and The Company shall be entitled to require the Buyer to deliver the Products or any of them to The Company on demand.

6.5 If the Buyer fails to deliver the Products on demand The Company shall be entitled to enter any premises where the Products are stored or are reasonably thought to be stored and The Company are hereby authorised to affect such entry on the Buyers behalf if necessary.

6.6 The Company shall have the right to dismantle any Product, machinery, equipment or any other thing whatsoever into which the Products or any of them have been incorporated and the Buyer shall indemnify The Company in respect of its costs and expenses of so doing and in respect of any third party claim arising as a result.

6.7 The Buyer may sell the Products by way of bona fide sale in the ordinary course of business but may not otherwise deal with, sell, part with possession of, change the character of, reconfigure, convert, handle or otherwise dispose of any of the goods until the Price has been paid. Where any of the Products are sold to a third party before the Price has been paid the sale shall constitute a sale of The Company property by the Buyer and accordingly the Buyer shall hold the proceeds on trust for The Company.

## **7.0 Payment**

7.1 The Company shall render an invoice on delivery of the Products to the Buyer. Payment for the Products, delivery charges and any taxes shall be due and payable, without retention or set off by the Buyer, to The Company not later than 30 days from the date of the invoice. Punctual payment is of the essence of the contract.

7.2 Where an Order calls for a number of items The Company reserves the right to deliver all or any number of items as soon as they are available to the Buyer's premises and the Buyer shall honour all invoices presented in respect of such deliveries in accordance with the terms for payment.

7.3 In the event that the Buyer shall delay in making any payment on the due date then the Buyer shall be liable to pay The Company interest on the unpaid sums. Such interest to be calculated at the rate of two per cent (2%) per month accruing daily.

7.4 In the event that the Buyer is in arrears in the payment of any sums due shall have exceeded any agreed written credit limit The Company shall, without prejudice to any of its existing rights or to any existing claim, be entitled to withdraw any credit facilities and shall not be obliged to supply any further Products whether Orders have been accepted by The Company or otherwise.

7.5 The Buyer is not entitled to withhold payment of any invoices nor to make any deductions from invoices on account of any claim against The Company whatsoever.

## **8.0 Returns**

8.1 Returns and Refunds: A Nouveau Solutions Return Authorisation Request Form must be submitted and approved prior to returning any Products to Nouveau Solutions. Nouveau Solutions will accept returns where the product is: (i) within 30 days of invoice, and (ii) on an open support case raised with Nouveau Solutions if suspected as being DOA, and (iii) undamaged and complete. Nouveau Solutions will use its discretion for returns where the Product is: (i) outside 30 days of invoice, or (ii) damaged or incomplete but still in resaleable condition, or (iii) build-to-order, a service or electronic license, or (iv) used but in a resaleable condition, or (v) considered unfit for purpose, as advised by Nouveau Solutions, or (vi) no longer required by the End User. Nouveau Solutions will not accept returns under any circumstances where the Product is: (i) outside of 60 days of invoice, or (ii) damaged to the extent requiring repair or replacement, or (iii) in any way not considered in resaleable condition, or (iv) specified as non-returnable prior to sale, or (v) classified as software and has been used, or (vi) classified as a service which has been in effect, or (vii) within 30-60 days of invoice but has been deemed 'end-of-life', discontinued or no longer supported by the Vendor. A return fee may be charged. The Nouveau Solutions Return and Refund Policy applies to all returns and refunds.

## **9.0 Warranty**

9.1 In the case of defects in materials or workmanship in the Products supplied but not manufactured by The Company the Buyer entitlement shall be limited to and no greater than that which The Company receives from the manufacturer or supplier thereof. The following provisions of this clause shall apply only in so far as they do not conflict with the foregoing.

9.2 The Company warrants that the Products shall be free from defects in materials or workmanship. The period of such warranties shall be ninety days unless the Buyer is notified in writing to the contrary. The warranty period shall commence on the date of dispatch of the Products to the Buyer.

9.3 In the event of any established breach of warranty The Company shall repair or replace in its absolute discretion any defective Products. The Buyer shall be liable for the delivery charges incurred in returning the defective Products to The Company but shall not be liable for the costs of the repair or the replacement of the Products or the delivery charges of the Products to the Buyer.

9.4 Repairs undertaken by The Company under the terms of its warranty are guaranteed for 90 days from the date of dispatch to the Buyer.

9.5 Where The Company in its absolute discretion replaced any defective Products the warranty on such replacement Products shall continue in effect for the remainder of the unexpired term of the warranty commencing from the date of dispatch of the defective Product.

9.6 The Company shall not be liable under this warranty:- (a) for any defect caused by fair wear and tear;

- (b) where the Products are subjected to abnormal usage or where the defect is due to the act, neglect or default of anyone other than The Company;
- (c) for the replacement, renewal or repair of any of the Products or part or parts thereof where the replacement renewal or repair becomes impossible as a result of force majeure or any other circumstances beyond The Company's control;
- (d) where the Products or any component parts thereof are the subject of a separate guarantee given by a third party the benefit thereof is hereby assigned by The Company to the Buyer.

9.7 The Buyer acknowledges that he has not notified The Company of any particular purpose for which the Products are required and subject to the provisions of this warranty all express or implied warranties or conditions statutory or otherwise as to quality of or fitness for any particular purpose of the Products are hereby expressly excluded and The Company shall not (except as set out above) be under any liability whatsoever in respect of defects in Products delivered or for any injury, damage or loss resulting from such defects from any cause whatsoever.

9.8 The Buyer shall have no claim for loss of profits or contracts or consequential loss, which may be suffered by the Buyer or any third party arising out of such breach of warranty.

## **10.0 Storage**

10.1 In the event that written dates addresses and general instructions for delivery of the Products are not notified to The Company at the time of placing the Order The Company shall be entitled to store the Products and the Buyer shall be liable for the reasonable costs of such storage.

## **11.0 Design**

11.1 The Company reserves the right to supply Products with design and specification changes as technological development may require without prior notice. All drawings descriptions and forwarding specifications and particulars of Products submitted are approximate only. The descriptions and illustrations contained in catalogues price lists and other advertising of The Company are intended merely to present a general idea of the Products described therein and shall not form part of the Contract. Whilst every effort is made to ensure that the latest specification is available The Company reserves the right to incorporate new features and to supply Products which may not be strictly in accordance with the specification agreed upon, provided that any changes in specification shall not materially prejudice the performance of the Products.

## **12.0 Patents**

12.1 The Buyer shall promptly notify The Company of any claim received by the Buyer alleging an infringement of patent or other intellectual property rights of a third party. The Company will refer such matter forthwith to the manufacturer of the Products. The Buyer shall co-operate with The Company (at The Company' expense) in defending any patent or

other right claimed in respect of the products and the Buyer shall execute all such documents and do all such things as The Company may require pursuant thereto. The Company shall not be liable to the Buyer in respect of patent infringement or claim based upon the use of the Products or a part thereof modified for use in connection with equipment or devices not supplied by The Company or in a manner for which the Products were not designed. Liability is further limited for use of the Products in countries for which patent protection has been obtained.

### **13.0 Force Majeure**

13.1 The Company shall not be liable for any failure to supply and/or deliver Products or any incomplete supply or delivery or for any damage to or defect in the Products caused by fire, theft, riot, war, terrorism, embargo, strikes, lockouts, labour disturbances, Acts of God or any other reason beyond The Company's control including any act or default of The Company's own suppliers or third parties. No consequences of any such event shall give rise to the rescission of the Contract unless in the opinion of The Company the Contract becomes incapable of performance.

### **14.0 Representations**

14.1 No agent or other party has authority to make oral representations prior to or after placing an Order and the Buyer has not relied upon any oral representations in placing an Order nor has any agent of either party authority to vary or modify the Terms and Conditions herein which may only be varied or modified in writing by The Company.

### **15.0 Sterling Protection**

15.1 Any quoted or listed sterling prices are subject to variation in the rate of exchange between sterling and the currency paid by The Company to the manufacturer of the Products prevailing between the date of the Contract and the time of submission of The Company's invoice to the Buyer, The Company reserves the right to vary the price so that it accords with the said rate of exchange prevailing at the time of The Company's invoice.

### **16.0 Default**

16.1 If the Buyer shall default in the performance of any of its obligations under the contract, The Company shall on giving the Buyer notice in writing have the right at The Company's option and without prejudice to any other right or remedies The Company may have under the terms of the Contract to take all or any one of the following actions:- (a) cancel all or any part of any discount which might otherwise have been due under the terms of the Contract;

(b) suspend any outstanding delivery of Products or part thereof until such default shall have been made good;

(c) recover possession of and remove from the Buyers' premises that part of the Products to which the default relates and the Buyer shall allow The Company access to his premises and such facilities as may be necessary to enable The Company to do so. No

waiver or delay in exercise by The Company of its right under this Condition shall be deemed to imply acceptance of or condemnation of the default or any subsequent default.

16.2 If the Buyer shall become bankrupt, go into liquidation, or become insolvent or have a receiving order made against him or compound with his creditors or carry on his business under a Receiver for the benefit of his creditors or any of them. The Company shall be at liberty without prejudice to any other or further remedies The Company may have under the Contract:-

(a) to terminate the Contract forthwith by notice in writing to the Buyer or Liquidator or Receiver; and

(b) to enter the Buyer's premises and recover and remove any or all of the Products or parts thereof in respect of which full payment of the price of the Products has not been made to The Company and the Buyer shall afford The Company free access thereto and to all facilities as may be necessary to enable The Company so to do.

## **17. Liability**

17.1 The Company shall be liable for loss, injury and damage which directly arises from and to the extent that it is caused by (a) any defects in or malfunctioning of the Products and (b) The Company's negligence. Otherwise The Company shall not be liable for any costs, claims, loss, damage or injury of whatsoever nature or howsoever caused.

17.2 Without prejudice to 1.1 (above) The Company shall not in any event be liable for consequential or indirect loss or damage howsoever arising.

17.3 The Buyer shall fully indemnify The Company against all claims and demands made upon The Company by reason of any such loss, injury or damage for which The Company is not liable hereunder.

## **18. Legal Fees for Breach of Conditions**

18.1 The Buyer shall pay to The Company forthwith on demand all expenses, costs or charges, including but not limited to all legal fees incurred as a result of or in any way connected with any breach of these Conditions. For the avoidance of doubt all legal fees payable to The Company hereunder shall be paid by the Buyer on a full indemnity basis.

## **19.0 Legal Construction**

19.1 Except where otherwise stipulated in writing the regulations, arrangements and agreements between the parties shall be governed by the laws of England and all disputes which may arise under out of or in connection with or relating to any contract between The Company and the Buyer may at The Company's absolute discretion be submitted to arbitration by a person determined by The Company from the list of counsellors recommended from time to time by The British Computer Society (also known as *The Chartered Institute for IT*) and should The Company not elect to refer any such dispute to arbitration all proceedings between the Parties shall be conducted in the Reading County Court or Reading District Registry of the High Court. Service of any notices in the course of

such arbitration or Court proceedings to the address of the Buyer given in the Contract shall be valid and sufficient.

19.2 All references in these Terms and Conditions to the masculine gender shall be deemed to include the feminine and neuter genders

19.3 Failure or neglect by The Company to enforce at any time any of the provisions hereof shall not be construed nor shall be deemed to be a waiver of The Company rights hereunder nor in any way effect the validity of the whole of or any part of this Contract nor prejudice The Company's rights to take subsequent action.

19.4 In the event that any of these terms, conditions or provisions shall be deemed to be determined invalid, unlawful or unenforceable to any extent such term, condition or provision shall be severed from the remaining terms, conditions and provisions which shall continue to be valid to the fullest extent permitted by law.

19.5 The headings to these Terms and Conditions are inserted for convenience of reference only and are not intended to be part of or affect the meaning of interpretation of any of the terms and conditions of this Contract.