

Glass's Information Services Ltd - Terms and conditions of relating to the supply of Glass's Products

1. INTERPRETATION

In these Conditions the following words shall have the following meanings:-

"Commencement Date"

in respect of any Contract the date on which the Contract is formed in accordance with clause 3;

"Conditions"

these terms and conditions.

"Contract"

the contract for the provision of Glass's Products comprising the Order Form, the Service Schedule, these Conditions and such other schedules as are agreed in writing by the parties as forming part of the Contract, and in the event of any inconsistency or conflict between those documents, their order of precedence shall be the same order as written in this clause;

"Electronic Media"

computer readable media for use on a computer or the internet;

"Glass's"

Glass's Information Services Limited whose registered office is at 1 Princes Road, Weybridge, Surrey, KT13 9TU, company number 717446;

"Glass's Products"

the products supplied by Glass's pursuant to the Contract, as indicated on the Order Form, including any Update and any computer software enabling access to and/or Use of the Products however supplied (whether in hard copy, or Electronic Media or via a remote communication link such as the Internet);

"Intellectual Property Rights"

(i) patents, registered trade or service marks, registered designs; (ii) unregistered trade marks, copyright, topography rights, database rights, moral rights, know-how rights in designs and inventions; (iii) trade, business and company names, Internet domain names and e-mail addresses; (iv) the goodwill attaching to any of the aforementioned rights; and (v) any forms of protection of a similar nature and having equivalent or similar effect in any jurisdiction; in each case including applications and rights to apply for any registered right;

"Order"

the Subscriber's request to Glass's to supply any or all of Glass's Products which shall be in the form of an Order Form;

"Order Form"

the form on which the Subscriber places its Order for the Glass's Products;

"Service Schedule"

the schedule to the Contract indicating specific terms forming part of the Contract in relation to specific Glass's Products, to the extent applicable;

"Subscription Fee"

the amount payable by the Subscriber in respect of its subscription to Glass's Products as specified on the Order Form and as subsequently varied in accordance with this Contract;

"Subscriber"

the person, firm or company who contracts to subscribe for Glass's Products pursuant to the Contract (and for the avoidance of doubt, this includes a person, firm or company who subscribes for a single issue of Glass's Products);

"Update(s)"

any updated, improved or modified version of Glass's Products from time to time issued by Glass's;

"Use"

in respect of Glass's Products supplied for use with computer equipment, the copying or transmission of Glass's Products into the computer equipment only within the Subscriber's organisation and not accessible to any third party for the purpose of the Contract, and accessing, operating or running Glass's Products as permitted by the Contract;

"Users"

individuals having access to Glass's Products on PCs or workstations at any one time.

2. TERMS OF THE CONTRACT

2.1 These Conditions apply to all supplies of Glass's Products by Glass's to the Subscriber to the exclusion of all other terms, conditions or representations (whether express or implied) including (but not limited to) terms, conditions or representations which the Subscriber may purport to apply under any purchase order, confirmation order or similar document. This Agreement replaces all previous agreements and understandings between the parties relating to the Glass's Products.

2.2 There shall be a separate Contract for each Glass's Product supplied, even if such Glass's Products are covered by the same Order Form, provided that training and support services shall be subject to the Contract in relation to the Glass's Product in respect of which such services are to be provided.

2.3 No variation to this Contract shall be binding unless agreed in writing between the authorised representatives of Glass's and the Subscriber.

2.4 Any typographical, clerical or other error or omission in any of the literature, quotation, Subscription Fee list, acceptance of offer, invoice or other document or information issued by Glass's shall be subject to correction without any liability on the part of Glass's.

3. ACCEPTANCE OF ORDERS

3.1 A Contract shall exist between the parties upon Glass's confirming acceptance of the Subscriber's Order and accordingly each Order when accepted in accordance with these Conditions constitutes a separate Contract between the parties.

3.2 Glass's may perform credit checks on the Subscriber before or after the Subscriber hereby consents to such checks being undertaken. Glass's shall not disclose any information obtained by the credit check to any other party except to the extent that Glass's are required or permitted to do so by law.

4. SUBSCRIPTION FEE AND PAYMENT

4.1 In consideration of the supply of Glass's Products the Subscriber will pay the Subscription Fee to Glass's.

4.2 The Subscription Fee is quoted in pounds sterling exclusive of VAT and any other tax or duty payable by the Subscriber, carriage and delivery costs.

4.3 Glass's shall not be bound to deliver Glass's Products until the Subscriber has paid for them.

4.4 The Subscription Fee is payable annually in advance or monthly in advance by direct debit or as otherwise agreed in writing between the Subscriber and Glass's. Subject to clause 4.9 below, changes in the Subscription Fee will be notified in writing, at least 45 days before the anniversary of the Commencement Date. Any fees expressed in the Order Form to be payable on invoice must be paid within 30 days of the date of the relevant invoice.

4.5 Any facility for monthly payments is subject to a minimum payment as determined by Glass's from time to time. If any agreed monthly payments payable by a Subscriber fall below such minimum amount, Glass's reserves the right to require annual payment and to collect payment accordingly.

4.6 If the Subscriber cancels any direct debit, credit/debit/charge card or other form of payment, or if Glass's is for any other reason unable to collect payment, when due under a Contract, the Subscriber will be liable to pay immediately all fees which would have become due for the remaining binding duration of the Contract and any costs or expenses which Glass's incurs as a result.

4.7 If the Subscriber fails to make any payment when due for any reason (including, without limitation, dishonoured cheques or card payments, direct debit cancellation), Glass's reserves the right to:

4.7.1 charge the Subscriber reasonable administration and bank charges in respect of such failure;

4.7.2 require immediate full payment of all Subscription Fees for the remainder of the then current duration of the Contract;

4.7.3 charge interest on the full amount (after, as well as before, judgment) at the rate of 4% p.a. above the base rate from time to time of the Bank of Scotland Plc from the due date therefor until payment in full;

4.7.4 suspend any and all licences granted to the Subscriber until it has made payment in full; and/or

4.7.5 terminate the Contract pursuant to clause 12.2.1.

4.8 The Subscriber acknowledges that any promotional discounts or offers given when entering the Contract are valid for a limited period only, and that full tariffs will apply after the initial term of the Contract unless otherwise agreed in writing by Glass's.

4.9 Glass's shall be entitled to increase all fees and rates by not more than the increase in the retail prices index (all items) not more than once per calendar year.

4.10 Visa and Mastercard payments will be processed in accordance with the applicable APACS Code of Practice as published from time to time.

5. DELIVERY

5.1 Any dates quoted for delivery of Glass's Products are approximate only and Glass's shall not be liable for any delay in delivery of Glass's Products howsoever caused. Time for delivery shall not be of the essence unless previously agreed by Glass's in writing in advance of the quoted delivery date. Glass's will deliver the Glass's Product by the method specified in the Order form.

5.2 Glass's will use its reasonable endeavours to provide Updates by any date specified. Where any Product is supplied via a remote communication link such as the Internet the Subscriber acknowledges that Glass's shall not be liable for any delay or failure to supply or any corruption of information caused by the communication link. Glass's obligation will be to use its reasonable endeavours to ensure that any version of Glass's Product, which is so affected is supplied to the Subscriber uncorrupted as soon as reasonably possible after it becomes aware of the problem.

6. RISK AND PROPERTY

6.1 Risk of damage to or loss of Glass's Products shall pass to the Subscriber on delivery to the Subscriber's delivery address.

6.2 Notwithstanding delivery and the passing of risk in Glass's Products or any other provision of the Contract, the property in physical media bearing Glass's Products shall not pass to the Subscriber until Glass's has received in cash or cleared funds payment in full of the Subscription Fee for Glass's Products and all other Glass's Products agreed to be sold by Glass's to the Subscriber which payment is then due.

7. INTELLECTUAL PROPERTY RIGHTS

7.1 Except for the licence granted to a Subscriber pursuant to clause 9.4.2 all Intellectual Property Rights in Glass's Products and any other items supplied pursuant to the Contract will remain the property of Glass's or its suppliers or sub-contractors.

8. CONFIDENTIALITY

8.1 The Subscriber shall:

8.1.1 Keep Glass's Products confidential and limit access to Glass's Products to those of its employees, agents and sub-contractors who have a need to know. Under no circumstances shall information contained in Glass's Products be made available to any member of the general public or any other third party (except for information that is already generally available to the public without charge or restriction);

8.1.2 notify Glass's immediately if it becomes aware of any unauthorised use or access to the whole or any part of Glass's Products by any third party;

8.1.3 at the request and at the expense of Glass's take all such steps as shall from time to time be necessary to protect the confidential information or Intellectual Property Rights of Glass's in Glass's Products;

8.1.4 inform all relevant employees, agents and sub-contractors that Glass's Products constitute confidential information of Glass's and that all Intellectual Property Rights therein are the property of Glass's or duly licensed to Glass's and the Subscriber shall take all such steps as will be necessary as to ensure compliance by its employees, agents and sub-contractors with the provisions of this clause 8.

9. SUBSCRIBER RIGHTS AND OBLIGATIONS

9.1 Except as expressly permitted below the Subscriber shall not copy, extract or re-utilise Glass's Products or any part of them, or create any derivative works based in whole or part in Glass's Products.

9.2 The Subscriber shall not assign, transfer, lease, rent, charge or otherwise deal with Glass's Products or use Glass's Products on behalf of any third party nor make Glass's Products available to any third party nor use Glass's Products to provide information bureau services.

9.3 The Subscriber shall not use Glass's Products other than as expressly permitted under the Contract, and shall only use the Glass's Products for its own business purposes.

9.4 Where Glass's Products are supplied for use in connection with computer equipment:

9.4.1 The Subscriber shall not permit or enable access to Glass's Products by more than the number of Users in respect of which it has paid a Subscription Fee;

9.4.2 Glass's grants to the Subscriber a non-exclusive non-transferable licence to Use Glass's Products and associated instruction manuals and guides for the duration of the Contract for its own business or personal purposes;

9.4.3 The Subscriber may make one back-up copy of Glass's Products which shall in all respects be subject to the Contract and shall be deemed to form part of Glass's Products and shall be left in a secure environment and shall be destroyed upon the creation of any subsequent back-up copy of Glass's Products or upon termination or expiry of the relevant Contract;

9.4.4 All copies of Glass's Products must reproduce the proprietary notices appearing on the original;

9.4.5 the Subscriber shall maintain an up-to-date written record of the number of Users and copies of Glass's Products and their location and upon request immediately produce such record to Glass's;

9.4.6 the Subscriber shall not develop, modify or adapt the Glass's Products or any of the information contained in them except to the extent that the Glass's Product expressly permits Users to alter certain parameters in the course of their Use.

9.4.7 the Subscriber shall not reverse engineer or de-compile Glass's Products except to the extent necessary to obtain interface information for the interoperability of Glass's Products to the extent that such information is not available from Glass's;

9.4.8 the Subscriber shall ensure that Glass's Products are used and cared for as contemplated in the accompanying user documentation;

9.4.9 the Subscriber shall ensure that adequate procedures are in place in accordance with best computing practice with regard to data security, accuracy and back-up; and will be responsible for backing up all its data; and

9.4.10 the Subscriber shall be responsible for ensuring that it is adequately protected against any virus or other harmful component entering its systems and for ensuring that there is no unauthorised use of the Glass's Product or data.

9.5 Where any part of the Glass's Products is supplied in printed media:

9.5.1 the Subscriber shall not make any copies of the same or any part; and

9.5.2 the Subscriber shall not provide or transfer the same to any other person.

9.6 The Subscriber shall install and Use any Update provided by Glass's by the first working day of the month following receipt of such Update.

9.7 The Subscriber is responsible for the security of all pass-words, log-ins and other details relating to its use of the Glass's Product, and for all use of them.

10. WARRANTIES AND INDEMNITY

10.1 Glass's warrants and represents that Glass's Products shall not infringe any Intellectual Property Rights of any third party in the United Kingdom. Subject to the limitations on its liability in clause 11, Glass's agrees to indemnify and hold the Subscriber harmless from and against any damages awarded or agreed to be paid to any third party arising out of Glass's breach of the foregoing representation and warranty, provided that:

10.1.1 The Subscriber gives notice to Glass's of any such claim forthwith upon becoming aware of the same; and

10.1.2 the Subscriber gives Glass's the sole conduct of the defence to any such claim and gives to Glass's such assistance as it shall reasonably require (at the expense of Glass's) in respect of the conduct of the said defence.

10.2 Glass's warrants that:

10.2.1 Glass's Products have been compiled using reasonable skill and care in accordance with good industry practice. The Subscriber acknowledges that in estimating present and in forecasting future values or providing any other information, Glass's will use reasonable skill and care, but in no event shall Glass's be liable in respect of any particular values which shall be treated as guides only;

10.2.2 It will during the term of the Contract use all reasonable endeavours to correct any errors notified to it in Glass's Products reasonably promptly, where appropriate by including the correction in the next scheduled edition or Update of Glass's Products;

10.2.3 It will use reasonable skill and care in the provision of any services provided under the Contract.

10.3 Glass's further warrants that where Glass's Products are delivered on Electronic Media:-

10.3.1 Where applicable, Glass's Products will comply with any accompanying product specifications in all material respects (it being acknowledged that Glass's Products may not operate entirely uninterrupted or error free);

10.3.2 the physical delivery media on which Glass's Products are carried will be free from any defect for a period of 30 days from delivery. In the event of any material inherent defects in the Electronic Media other than a defect caused by an accident, abuse or misuse by the Subscriber, Glass's sole liability will be to replace the defective original medium free of charge.

10.4 The warranties and obligations contained in clauses 10.1 and 10.3 are subject to:

10.4.1 Glass's being notified in writing within 5 days of the Subscriber first discovering any such possible breach; and

10.4.2 the Subscriber using Glass's Products in accordance with the accompanying operating instructions.

10.5 Glass's gives no warranty as to the accuracy, completeness, correctness or freedom from defects of information or data supplied by third parties and incorporated by Glass's into Glass's Products and warrants only that it has copied or imported such information or software correctly.

10.6 The warranties set out in this Contract are exclusive of and in lieu of all other warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise which relate to the condition and fitness for any purpose of Glass's Products.

11. LIMITATION OF LIABILITY

11.1 The clause 10.1 does not limit Glass's liability (including any liability for the acts and omissions of its employees, agents and sub-contractors) in respect of any breach of its contractual obligations arising under any Contract and any representation, statement or tortious act or omission including negligence and any other form of liability, AND THE SUBSCRIBER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF THIS CLAUSE 11.

11.2 Glass's liability to the Subscriber will not be limited for (a) death or personal injury resulting from its own negligence or that of its employees, (b) fraud or (c) any other matter for which liability cannot as a matter of applicable law be limited.

11.3 Subject to the provisions of clause 11.2, Glass's entire liability shall be limited to damages of an amount equal to the aggregate of the Subscription Fee paid or due to be paid in respect of the year in which the liability arose.

11.4 Subject to clause 11.2, Glass's shall not be liable to the Subscriber for:

(a) any loss of profits, business, anticipated savings, goodwill, data or other such loss; or

(b) any type of special indirect or consequential loss or damage;

in each case including loss or damage suffered by the Subscriber as a result of an action brought by a third party against Glass's or its employees, agents or sub-contractors or Glass's had been advised of the possibility of the Subscriber incurring the same.

11.5 Notwithstanding clause 11.3 above, where any valid claim in respect of any of Glass's Products which is based on any defect in the quality or condition of Glass's Products or their arrangement, is notified to Glass's in writing, notice is notified to Glass's in accordance with the Contract, Glass's shall be entitled to replace Glass's Products free of charge or, at Glass's sole discretion, refund to the Subscriber the Subscription Fee or a proportionate part of the Subscription Fee, in which case Glass's shall have no further liability to the Subscriber. Notwithstanding the above, Glass's shall be under no obligation to replace Glass's Products or to refund the Subscription Fee if Glass's Products show signs of wear and tear or of having been damaged by the Subscriber.

12. TERM AND TERMINATION

12.1 The Contract shall enter into force on the Commencement Date and unless otherwise specified in the Service Schedule or the Order Form shall have an initial duration of 12 months, continuing in force thereafter for further periods of twelve months. Either party may terminate the Contract with effect from the end of the then current period by giving the other written notice of such termination not less than 30 days before the expiry of the then-current period.

12.2 The Contract may be terminated by notice in writing:-

12.2.1 Forthwith by Glass's if the Subscriber or any of its group undertakings (as defined in section 116(1)(3) Companies Act 2006) fails to pay any sums payable under the Contract or any other debt due to Glass's or any of its group undertakings within 30 days of the due date;

12.2.2 Forthwith by either party if the other commits any material breach of any term of the Contract (other than one falling within clause 12.2 and which in the case of a breach capable of being remedied) shall not have been remedied within 30 days of a written request to remedy the same;

12.2.3 Forthwith by either Party if the other convenes a meeting of its creditors or if a proposal is made for a voluntary arrangement (as defined in section 1(1) Insolvency Act 1986 or for any other composition scheme or arrangement with or assignment for the benefit of its creditors or if the other shall be unable to pay its debts within the meaning

of Section 123 of the Insolvency Act 1986 or if a trustee receiver, administrator or administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up or bankruptcy of the other or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction).

12.3 Any termination of the Contract shall be without prejudice to any other rights or remedies a Party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either Party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination which shall include without limitation clause 8 which shall survive termination of the Contract by either Party.

12.4 Within 7 days of the termination of the Contract (which shall include termination of the licence granted pursuant to clause 9.4.2) the Subscriber shall in the case of Glass's Products for use with computer equipment at Glass's sole option either return or destroy all such copies of Glass's Products in its possession or control and a duly authorised officer of the Subscriber shall certify in writing to Glass's that the Subscriber has complied with this obligation.

12.5 For the avoidance of doubt, any purported termination of the Contract by the Subscriber (other than a termination in accordance with the provisions of clause 12.2.2 or clause 12.2.3) shall not entitle the Subscriber to a refund of any Subscription Fee paid in respect of the then current year, but the Subscriber may decide to continue to receive further Updates for the remainder of the then current year.

12.6 The Subscriber acknowledges that the Subscription Fee is payable in one lump sum annually in advance of delivery of Glass's Products unless otherwise specified in the Order Form. In certain circumstances Glass's will allow the Subscription Fee to be paid by Direct Debit in 12 equal monthly instalments. If the Subscriber shall fail to pay any such instalment the balance of the Subscription Fee payable in any year shall immediately become due and payable and the Subscriber shall forthwith on demand pay to Glass's the full amount of the balance of the outstanding Subscription Fee. Glass's shall be under no obligation to deliver any further Updates until such time as all arrears have been settled.

13. DATA PROTECTION

13.1 To the extent that Glass's is required to process any personal data on behalf of the Subscriber, it shall do so as a data processor and accordingly it shall:

13.1.1 effect and maintain appropriate technical and organisational measures against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data; and

13.1.2 only act in accordance with the Subscriber's instructions in relation to such personal data.

13.1.3 For the purposes of clause 13, "process", "personal data" and "data processor" shall have the meanings given to them in the Data Protection Act 1998.

14. TUPE

14.1 The Subscriber warrants that there will be no transfer of an undertaking for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE"), whether from the Subscriber or another of its service providers, caused by the performance of this Agreement, and Client will indemnify Glass's against all losses, liabilities, damages and reasonable costs and expenses incurred in connection with any claim relating to such a transfer.

14.2 Subject to the fulfilment of clause 14.1, Glass's will indemnify the Subscriber against all losses, liabilities, damages and reasonable costs and expenses incurred in connection with a claim that termination of the Contract gives rise to a transfer of an undertaking for the purposes of TUPE.

15. FORCE MAJEURE

Neither Party shall be liable for any loss or damage caused by delay in the performance or non-performance of any of its obligations under the Contract where the same is occasioned by any cause whatsoever that is beyond the reasonable control of that Party. Should any such event occur the Party in default shall forthwith give notice to the other detailing the circumstances and if a default shall continue for more than 6 weeks then the other Party shall be entitled to terminate the Contract. Neither Party shall have any liability to the other in respect of the termination of the Contract as a result of such an event.

16. ASSIGNMENT

The Subscriber shall not without the prior written consent of Glass's assign, sub-license or otherwise transfer the Contract nor all or any of its rights and obligations under the Contract. Glass's shall be entitled to sub-contract or assign its rights and/or obligations under the Contract to any of its group undertakings (as defined in s116(1) of the Companies Act 2006) or to any person to whom it outsources any function that relates to the Contract.

17. AUDIT

Glass's (or any of its representatives) shall have the right, on providing reasonable notice to the Subscriber, to enter the Subscriber's premises and use all computer systems and facilities for the purpose of inspecting and copying any records or other information in any medium as reasonably necessary to monitor the Subscriber's compliance with the Contract, subject to the Subscriber's obligations of confidentiality to third parties.

18. NOTICE

Any notice required or permitted to be given by either Party to the other under the Contract shall be in writing (which shall not include e-mail addressed to that other Party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice).

19. WAIVER

Failure or delay by Glass's to exercise or enforce any rights will not be construed as a waiver of its rights under the Contract or otherwise. No waiver by Glass's of any breach of the Contract by the Subscriber shall be considered as a waiver of any subsequent breach of the same or any other provision.

20. SEVERANCE

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

21. CHANGES TO CONDITIONS

Glass's reserves the right to revise these Conditions from time to time. Glass's will give the Subscriber a minimum of 45 days notice of the revised terms which will apply to the ongoing provision of Glass's Products with effect from the beginning of the next period of the Contract as determined in accordance with clause 12.1.

22. LAW

This Contract shall be governed by and shall be read and construed in all respects in accordance with English law and each of the parties hereto submits to the non-exclusive jurisdiction of the English courts.